

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-7479

UNITED STATES COURT OF APPEAL
FOR THE SECOND CIRCUIT

NATIONAL EQUIPMENT RENTAL, LTD.,

Plaintiff-Appellant,

No. 75-7479

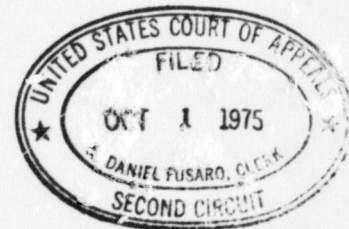
-against-

BERNARD QUINTIN and THOMAS QUINTIN,
Ind. and d/b/a THE QUINTIN COMPANY
Co-partners under the laws of the
State of California and DOROTHY
K. QUINTIN,

Defendants-Appellees.

APPEAL FROM THE ORDER OF THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
NEW YORK

APPENDIX



GERALD S. JACOBS
Attorney for
Plaintiff-Appellant
410 Lakeville Road
Lake Success, N.Y. 11040
(212) 343-1005

3

PAGINATION AS IN ORIGINAL COPY

APPENDIX TABLE OF CONTENTS

	<u>PAGE</u>
1. Docket Entries.....	1
2. Order Appealed From.....	4
3. Letter of Gerald S. Jacobs & Plaintiff's Proposed Unsigned Order to Restore.....	6
4. Affidavit of Gerald S. Jacobs In Opposition to Defendant's Proposed Order.....	8
5. Letter of Michael S. Oberman to Judge Bartels.....	16
6. Affidavit of Michael S. Oberman In Opposition to Plaintiff's Motion to Restore.....	18
7. Affidavit of Jay J. Wall, Re: Attorney Fees.....	23
8. Affidavit of Thomas Quintin In Opposition to Plaintiff's Motion to Restore.....	29
9. Order Relieving Attorneys Golenbock & Barell.....	33
10. Affidavit of Leonard W. Wagman In Support of Motion to Relieve Attorneys.....	34
11. First Order Extending Defendant's Time to Answer.....	37A
12. Third Order Extending Defendant's Time to Answer.....	38
13. Letter of Gerald S. Jacobs Adjourning Status Conference.....	39
14. First Order of Dismissal.....	40
15. Second Order of Dismissal.....	41

CHRONOLOGICAL LISTING

16. Petition for Removal & Bond (Complaint).....	42/46
17. Notice of Filing Petition For Removal & Bond.....	59
18. Notice of Motion; Affidavit of Leonard W. Wagman & Memo of Law, Support of Defendant's Motion to Transfer Case to U.S.D.C. Central California & Extending Defendant's Time to Answer.	61

19.	Memorandum of Law In Opposition to Plaintiff's Motion to Transfer Case.....	76
20.	Affidavit of Gerald S. Jacobs In Opposition to Plaintiff's Motion to Transfer Case.....	86
21.	Reply Affidavit of Leonard W. Wagman In Support of Plaintiff's Motion to Transfer Case.....	94
22.	Transcript of Decision By Judge Bartels Denying Motion to Transfer & Extending Defendant's Time to Answer for Second Time.....	99
23.	Answer.....	107
24.	Notice of Motion to Relieve Defendant's Attorneys.....	114
25.	Affidavit of Nick Limar to Vacate First Dismissal.....	116
26.	Copy of Letter of Nick Limar to Golenbock & Barell, Re: Vacating First Dismissal.....	119
27.	Order Vacating First Order of Dismissal.....	121
28.	Notice of Entry of Order Relieving Defendant's Attorneys.....	122
29.	Letter of Andrea Hyde, Re: Address of Defendant Bernard Quintin.....	125
30.	Notice of Motion to Vacate Second Dismissal & Affidavit of Jerome Heller to Vacate Second Order of Dismissal.....	126
31.	Letter of Jay J. Wall.....	133
32.	Notice of Appeal.....	135
33.	Notice of Motion to Extend Plaintiff's Time to Appeal.....	137
34.	Order Extending Plaintiff's Time to Appeal.....	140
35.	Clerk's Certificate.....	141
36.	Index on Appeal.....	142

730 025

NATIONAL EQUIPMENT RENTAL, LTD.
vs. BERNARD QUINTIN, et al

2

6/7/73	Petition for Removal and Bond for Removal filed (Sp. Ct. - Nassau Cty)	1/1a
6-13-73	Notice of filing of petition & bond for removal filed	2
6/25/73	By Bartels, J. - Order dtd. 6/22/73 extending time for defts. to answer to 7/5/73 filed.	3
7-11-73	Notice of motion and memorandum of law to transfer case to U.S. D.C. Central District of California and extending deft's time to answer complaint 30 days filed.	4/5
8-14-73	Affidavit of Gerald S. Jacobs and memorandum of law in support of plttf's affidavit in opposition to defts' motion to transfer filed.	6/7
8-17-73	Reply affidavit of Leonard W. Wagman in further support of defts' motion to transfer, etc. filed.	8
8-17-73	Before BARTELS, J - Case called. Deft's motion to transfer to the Central District of California - denied. Deft's motion to extend time to answer, - Granted. Status report set down for 10-16-73.	
8/20/73	Stenographer's transcript of 8/17/73 filed.	9
9-17-73	By BARTELS, J. Order dtd 9-11-73 extending time for Defts to answer the complaint to 9-28-73 filed.	10
10-3-73	ANSWER filed.	11
10-15-73	Letter from Gerald S. Jacobs dtd 10-15-73 adjourning status report filed. (adjourned to 11-19-73).	12
12-13-73	Notice of motion to relieve attys. of record filed.	13
12-9-73	Before BARTELS, J. - Case called. Defts' counsel's motion to be relieved as counsel. Motion granted. Order to be submitted. Order of dismissal signed.	
12-13-73	By BARTELS, J. - Order of dismissal filed. (dismissal may be vacated within 30 days upon filing an affidavit, etc.) (p/c mailed to attys).	14
1-31-74	Affidavit of Nick Limar to reopen case filed.	15
1-31-74	Copy of letter from Nick Limar to Golenbock & Barell dtd 12-19-73 filed.	16
1-31-74	By BARTELS, J. - Order dtd 1-29-74 vacating order of dismissal filed. (p/c mailed to attys).	17
3/1/74	By BARTEES, J. - Order dated 2/28/74 filed that the said motion of attys Golenbock & Barell to be relieved as counsel for all defts is granted.	18

LEWIS ORGEL
CLERK

By:

M. A. S. K. S.
DEPUTY CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

U. S. DISTRICT COURT
JUL 9, 1975

----- X
NATIONAL EQUIPMENT RENTAL, LTD.,

TIME " " :
P.M. :
P.M. :

Plaintiff,

- against -

73 Civ. 825 JRB

BERNARD QUINTIN and THOMAS QUINTIN,
individually and d/b/a THE QUINTIN
COMPANY co-partners under the laws
of the State of California, and
DOROTHY K. QUINTIN,

Order

Defendants.

M'FILMED

----- X
Plaintiff, National Equipment Rental, Ltd., having
moved the Court by notice of motion for an order restoring this
action to the calendar, and the matting having duly come on to be
heard before this Court on May 22, 1975,

Now, upon reading the affidavit of Michael S. Oberman,
sworn to May 28, 1975, the affidavit of Jay J. Wall, sworn to
May 27, 1975, and the affidavit of Thomas Quintin, sworn to
May 19, 1975, each submitted in opposition to the motion; and
the affidavit of Gerald S. Jacobs, sworn to May 1, 1975, submitted
in favor of the motion, it is hereby

ORDERED, that the complaint be, and the same hereby is,
dismissed with prejudice, unless plaintiff (i) submits within
thirty days from the date hereof an affidavit establishing to the
Court that good cause exists for plaintiff's failure to appear at
pre-trial proceedings on December 13, 1973, March 18, 1975 and
April 22, 1975; and (ii) pays to defendants, within ^{7-10 (10)} ~~five~~ days

24

affidavit of
Michael S.
JUL 9, 1975

affidavit of
Michael S.
JUL 9, 1975

of entry of an order restoring the action, the amount of
~~\$~~ 1,000.00
~~\$~~ 1,200.00 as attorney's fees incurred by defendants as a direct

result of plaintiff's failures to appear. *Hamm, Silvestri*

(i) advise the case will be returned to the court and the fee of \$1,000.

Dated:

1975

my 24 1975

William P. Burton
 United States District Judge

Gerald S. Jacobs
Attorney at Law

410 Lakeville Road
Lake Success, N.Y. 11040
(212) 343-1005

June 5, 1975

Hon. John R. Bartels
U.S. District Court
225 Cadman Plaza East
Brooklyn, New York 11201

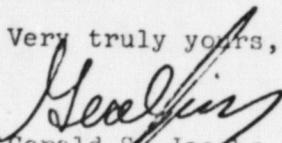
Re: National Equipment Rental, Ltd.
v. Bernard Quintin, et al.

Dear Sir:

Please find enclosed our proposed order for the above captioned matter, together with the affidavit accompanying said order.

I would appreciate your consideration in signing the order that we have submitted as opposed to signing the order of the defendants. The accompanying affidavit sets forth the facts upon which we base the submission of our order. I am enclosing herewith a copy of the order, together with the stamped, self-addressed envelope and I would appreciate your returning to me a conformed copy of the order signed.

Very truly yours,


Gerald S. Jacobs

GSJ:lp
Encs.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NATIONAL EQUIPMENT RENTAL, LTD.,

Plaintiff,

- against -

BERNARD QUINTIN and THOMAS QUINTIN,
individually and d/b/a THE QUINTIN
COMPANY co-partners under the laws
of the State of California, and
DOROTHY K. QUINTIN,

Defendants.

ORDER

Index No. 73 C 825 JRB

U.S. DISTRICT COURT - NY
JUN 2 1975

RECEIVED
JUN 2 1975

Plaintiff, NATIONAL EQUIPMENT RENTAL, LTD., having moved the court by notice of motion for an order restoring this action to the calendar and the matter having duly come on to be heard before this court on May 22, 1975, now, upon reading the affidavits of Michael S. Oberman, Esquire sworn to May 28, 1975 the affidavit of Jay J. Wall sworn to May 27, 1975 the affidavit of Thomas Quintin sworn to May 19, 1975 submitted in opposition to the motion and the affidavit of Gerald S. Jacobs, sworn to May 1, 1975 submitted in favor of the motion, it is hereby

ORDERED, that the above captioned matter be, and the same hereby is, restored to the calendar without costs or disbursements to either party.

Dated , 1975

UNITED STATES DISTRICT JUDGE

8

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

NATIONAL EQUIPMENT RENTAL, LTD.,

Plaintiff,

- against -

AFFIDAVIT IN OPPOSITION
TO DEFENDANTS' ORDER

Index No. 73 C 825 JRB

BERNARD QUINTIN and THOMAS QUINTIN,
individually and d/b/a THE QUINTIN
COMPANY co-partners under the laws
of the State of California, and
DOROTHY K. QUINTIN,

Defendants.

-----X

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

GERALD S. JACOBS, being duly sworn deposes and says:

1. I am the attorney for the plaintiff herein and I am fully familiar with all the facts and circumstances herein set forth.

2. I make this affidavit in opposition to the order submitted by the defendants and with respect to the affidavit accompanying said order made by Michael Oberman, Esquire, the attorney for the defendants here in New York.

3. My first objection to the order as proposed is that I believe it goes far beyond the decision rendered by this court with respect to the restoration of the action to the calendar and the payment of attorney's fees. The order is providing that the action be dismissed with prejudice unless the plaintiff complies with the following: "(i) submits within thirty (30) days from the date hereof an affidavit establishing to the court that good cause exists for plaintiff's failure to appear at pre-trial proceedings on December 13, 1973, March 18, 1975 and April 22, 1975 and (ii) pays to defendants, within five (5) days of entry of an order restoring the action the amount of \$1,200 as attorney's fees

9

incurred by defendants as a direct result of plaintiff's failure to appear." The cause was shown to this court as to why the plaintiff did not appear and for which further detail and facts I will go into later in this affidavit and that it is my understanding the court did in fact grant the motion to restore but required that the plaintiff should pay up to the amount of \$1,200 for attorney's fees, which were allegedly incurred by the plaintiff's failure to appear on the aforesaid dates, but not that the plaintiff should pay the total sum of \$1,200.

4. When Jerome Heller, Esquire of my office appeared before this court on May 22nd, he was caught by surprise with the order of the court requesting attorney's fees and he was not 100% familiar with all the facts surrounding this whole case since its inception and the following is to give this court an insight into the facts so as to have the matter restored to the trial calendar for trial and without penalizing the plaintiff any further in respect to payment of attorney's fees. The facts surrounding this transaction are as follows:

The plaintiff commenced an action against the defendants herein in and around May of 1973 in the Supreme Court of the State of New York. Thereafter, the defendants, by their former attorneys, Golenbock and Barell filed a petition with this court requesting transfer of the action from the State Court to the Federal Court on or about June 11, 1973. The plaintiff consented to this petition and the matter was transferred to the U.S. District Court for the Eastern District. Thereafter, in and around July of 1973 the defendant did bring a motion to have this action transferred to the U.S. District Court for the Central District of California pursuant to 28 U.S.C. Section 1404 (a) which motion was heard by this court in and around August of 1973 and a decision was rendered denying the defendants' motion. The

defendant did not file and serve its answer until October of 1973 and this answer was filed after several requests were made by the defendant to the plaintiff for an extension of time and that your deponent had telephone conversations with Andrea Hyde, Esquire, the attorney handling this matter for the defendants who advised that one of the difficulties she had in filing and serving her answer was her inability to communicate with the defendants herein. Finally, in October of 1973, an answer was served and filed.

On October 16, 1973 this matter was scheduled for a status report and at the request of the former attorneys for the defendants, this matter was adjourned until November of 1973 and their reason being was that they could not contact the defendants herein in order for them to appear at a status hearing. Again in November of 1973 a status hearing was set and again the defendants requested an adjournment and this adjournment was granted until December 13, 1973. Some time prior to that on or about December 10 the attorneys for the defendants contacted your deponent and advised that they were going to withdraw from this matter as they were unable to contact their clients. A copy of a telegram to Kenneth J. Golden, Esquire who was the attorney for the defendants in California is annexed hereto as Exhibit A. It clearly states that their former attorneys are going to submit a request to be relieved for their inability to contact the defendants. Attached hereto as Exhibit B is a letter dated December 12th advising why the former attorneys were withdrawing. On December 13th the plaintiff's attorneys being in a state of confusion as to what was going to happen and who is going to appear on behalf of the attorneys, did send down a Mr. Nick Limar, an associate in this office, who due to weather conditions and the fact that he lives way out in Suffolk County, was unable to get to the court on time, but he did in fact appear at the court. Subsequently, a motion was brought on to have the matter restored and on the two other occasions,

March 18th and April 22, 1975 the plaintiff did fail to appear due to the reasons that your deponent's associates were again in one case traffic and secondly a flat tire, but the matter on April 22 was again adjourned prior to April 22nd at the request of the new attorneys for the defendants herein. That all throughout the proceedings in this matter the plaintiff was ready, willing and able to proceed but it was the defendants whose actions with their own attorneys in the State of New York led to the former attorney to withdraw and placed the plaintiff in a awkward position although I do not excuse myself from not having moved more quickly in that it did not know whom to contact as it could not contact the defendants since it did not know where to contact them, but throughout the proceedings, the plaintiff has tried to move without prejudicing the rights of the defendants herein and that on any of these occasions, the defendant never appeared until May 22 1975 and it was only at that point that they finally had an attorney show up to one of the status hearings, but on two prior occasions there was no harm to the defendant herein in that they did not have counsel, did not retain counsel, nor did they personally appear at any of these status hearings, so that they could not have incurred any expenses on these prior hearings for which the plaintiff should now be required to make restitution and it is only finally on a final matter in April of 1975 when the defendant attorney in California contacted the plaintiff and it was at that time that the defendant was seeking to retain counsel. It had to retain counsel, it had to incur those expenses that are alleged to have been incurred pursuant to the affidavits accompanying the order. It would have had to incur those expenses at any time in order that a default judgment would not be entered against it, so that these expenses incurred by them are not expenses incurred as a result of any delay in this matter, but would be incurred because of a prudent prosecution of this matter. It is the plaintiff who has incurred considerable expense by the defendants' actions by

12

their delay by their failure to cooperate with their attorneys in New York, why they failed to cooperate is beyond me and I do not have an answer for that.

Thusly, in accordance with the foregoing facts, the defendants were in no way prejudiced harmed or in any way deceived and that they incurred no additional expenses for defense of this lawsuit because of the plaintiff, but in fact incurred any additional expenses because of their own neglect. They had an attorney in California, one by the name of Kenneth J. Golden, they had an attorney in New York, the firm of Golenbock and Barell but now they had to go and incur additional expenses on their own behalf because they have sought to retain new counsel, to wit, the firm of Wall, Fergus and Swanson in California and the firm of Nickerson, Kramer, Lowenstein, Nessen, Kamin & Soll in New York. It is their actions that have created these additional expenses and not the actions of the plaintiff, and on the basis of this the plaintiff should not be penalized for their attorney's fees but this matter should be restored and the proposed order submitted by the plaintiff herein should be signed without any further penalties, delays or prejudice to the plaintiff.

5. The non-action taken by the plaintiff in this matter was not due to its own actions, but the foregoing actions of the defendants herein. There has been no harassment by the plaintiff of the defendants, but in fact it has been the other way around. They retained counsel, they got rid of counsel, they get new counsel and constantly the plaintiff has to go back and forth as to determine which counsel is now defending the defendants herein. The work load of your deponent's office is great and because of this work load your deponent and his people have not been able to devote all the time to each of its cases that it would like to devote and that in fact your deponent has prepared a motion for summary judgment which, when Mr. Heller took over, we were supposed

to complete, but again due to the work load, he was unable to do this, but by the inaction of the plaintiff, certainly the defendants have not been prejudiced and in fact they have been helped because these motions would have been brought on and they would not have had counsel to help them defend it, but it is they, as I have repeatedly said who have constantly changed counsel and creating their own expenses and not the plaintiff.

WHEREFORE, your deponent respectfully requests that the proposed order submitted by the defendants not be signed by your honor but that the proposed order submitted by the plaintiff in view of the circumstances set forth herein, be signed.

GERALD S. JACOBS

Sworn to before me this
day of June, 1975.

14

NO. WDS.-CL. OF SVC.	PD. OR COLL.	CASH NO.	CHARGE TO THE ACCOUNT OF	<input type="checkbox"/> OVERNIGHT TELEGRAM UNLESS BOX ABOVE IS CHECKED THIS MESSAGE WILL BE SENT AS A TELEGRAM
Send the following message, subject to the terms on back hereof, which are hereby agreed to				December 11 1973
TO Kenneth J. Golden, Esq.				CARE OF OR APT. NO.
STREET & NO. 7842 Westminster Avenue				TELEPHONE
CITY & STATE Westminster, California 92683				*ZIP CODE
<p>STATUS REPORT IN QUINTIN ACTION SCHEDULED AT COURT FOR THURSDAY, DECEMBER 13. NOT HAVING HEARD FROM YOU OR CLIENT, WE ARE SUBMITTING REQUEST TO BE RELIEVED AS ATTORNEYS.</p>				
<p>LEONARD W. WAGMAN GOLENBOCK AND BARELL</p>				
SENDER'S TEL. NO.	NAME & ADDRESS		60 East 42nd Street New York, N.Y. 10017	

WU 1297 (R 5-69)

GOLLENBOCK AND BARELL

60 EAST 42ND STREET

NEW YORK, N.Y. 10017

212-986-3300

CABLE "GOLLEAL"

December 12, 1973

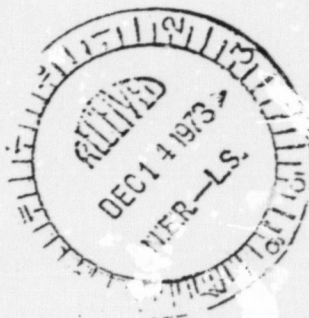
MARTIN C. BARELL
JUSTIN M. GOLLENBOCK
SEYMOUR R. EINMAN
DONALD D. SHACK
HARVIN B. TEPPER
HENRY C. SHAYS
ARNOLD RAYNOR
LEONARD W. WAGMAN
NORMAN J. MENELL
BERNARD H. GOLDFUSS
ARTHUR M. HANDLER
ROBERT M. BIRNBAUM
STEVEN H. FRANKEL
ARTHUR C. SILVERMAN
CHARLES ZALAZNICK
SAM W. GALOWITZ
RUDOLF CALLMANN
COUNSEL

BENJAMIN L. SILVER
IRVING SHIMOFF
FREDERICK A. WALLACH
MICHAEL R. LAZARUS
ROGER A. GERBER
MICHAEL A. LEVIN
PETER ROTHENBERG
DAVID A. HANDEL
MICHAEL C. SILBERBERG
JOEL A. PERST
LOUISE E. DENBECK
ARTHUR I. WEINSTEIN
MARK D. STERN
M. JOSEPH HELLO
HARVEY SCHWARTZ
JEFFREY N. SIEGEL
STEPHEN M. RATHKOFF
RICHARD M. RESNIA
ALBERT M. GORNAN
EDWARD D. TANENHAUS
JEROLD S. YARE
ROBERT S. GOODMAN
ANDREA HYDE
ROBERT J. SHANSKY
MICHAEL S. MULLMAN
IRA S. GREENE
RONALD S. KATZ
GEORGE T. SIMON
CHRISTINA B. LEE

Messrs. Bernard and Thomas Quintin
The Quintin Company
3303 Harbor Boulevard
Building H, Suite 9
Costa Mesa, California

The Quintin Company
4524 West First Street
Santa Ana, California

Ms. Dorothy Quintin
541 Sturgeon Drive
Costa Mesa, California



Gentlemen:

Re: National Equipment Rental v. Quintin

The enclosed copy of a telegram sent on December 11th is self-explanatory.

The Telephone Company has given us a new listing for The Quintin Company; we were unable to reach anyone at the number we were given. Several letters since October, addressed to Mr. Golden, have not been answered.

We are, therefore, compelled to ask the Court to relieve us.

Very truly yours,

Leonard W. Wagman

LWW/rs
Encl.
CERTIFIED MAIL-Ret. Rec. Reg.
(Copy sent regular mail)

RECEIVED
DEC 14 1973

16

NICKERSON, KRAMER, LOWENSTEIN, NESSEN, KAMIN & SOLL
919 THIRD AVENUE
NEW YORK, N. Y. 10022
(212) 686-1100

CABLE ADDRESS
NICKERSON
TELEPHONE NUMBER
NY 581-5340

June 6, 1975

Honorable John R. Bartels
United States District Court
Eastern District of New York
United States Courthouse
Cadman Plaza
New York, New York

Re: National Equipment Rental, Ltd., v. Bernard
Quintin, et al.
73 Civ. 825

Dear Judge Bartels:

On May 28, 1975, I submitted a proposed order along with the affidavit of J. J. Wall, sworn to May 27, 1975, and my affidavit, sworn to May 28, 1975, pursuant to the Court's direction at the hearing on May 22, 1975. At that hearing, the Court reserved decision on the question of whether this action should be restored to the calendar but held that, in the event that the action is restored, plaintiff pay to defendants attorney's fees incurred as a result of plaintiff's failures to appear at pre-trial proceedings, up to an amount of \$1,200.

I received by mail today an undated copy of an affidavit of Gerald S. Jacobs, attorney of record for plaintiff. In this affidavit, Mr. Jacobs -- who did not personally appear at the hearing -- contends that the proposed order submitted by me goes far beyond the decision rendered by the Court and that plaintiff's complete failure both to prosecute this case and to appear at scheduled pre-trial proceedings were somehow caused by the actions of defendants. The record supports neither Mr. Jacobs' late-in-the-day contentions nor his obvious effort to re-litigate the motion. For the reasons stated in my affidavit of May 28, 1975 and in Mr. Wall's affidavit of

25

NICKERSON, KRAMER, LOWENSTEIN, NESSEN, KAMIN & SOLL

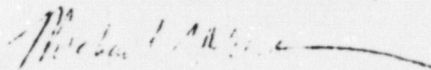
Honorable John R. Bartels

-2-

June 6, 1975

May 27, 1975, I respectfully urge the Court to enter the proposed order submitted on behalf of defendants on May 28, 1975.

Respectfully submitted,



Michael S. Oberman

MSO/kh

cc: Gerald S. Jacobs, Esq.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

NATIONAL EQUIPMENT RENTAL, LTD., :

Plaintiff, : 73 Civ. 825 JRB

- against - :

Affidavit

BERNARD QUINTIN and THOMAS QUINTIN, :
individually and d/b/a THE QUINTIN :
COMPANY co-partners under the laws :
of the State of California, and :
DOROTHY K. QUINTIN, :

Defendants. :

-----X

MICHAEL S. OBERMAN, being duly sworn, deposes and says:

1. I am associated with the law firm of Nickerson, Kramer, Lowenstein, Nessen, Kamin & Soll, counsel to the defendants. I make this affidavit in opposition to plaintiff's motion to restore the action to the calendar and in support of an award of attorney's fees to defendants.

Background of case: two years
of inactivity marked by plain-
tiff's repeated failure to ap-
pear

2. This action, alleging breach of contract, was commenced in Supreme Court, Nassau County, in May 1973. Upon petition of defendants, the case was removed to this Court on June 7, 1973. Defendants thereafter moved in July 1973 to transfer the action to the Central District of California; defendants, operators of a family business in California, had entered the contract

not in suit under the impression that they were dealing with a California lessor, because all negotiations with respect to the contract occurred in California. However, the motion to transfer was denied by this Court in August 1973.

3. Aside from mailing the complaint in May 1973 and opposing the transfer motion in August 1973, it appears that plaintiff has not taken one step to prosecute its case. No documents have been requested or produced. No depositions have been noticed. No interrogatories have been propounded. Nor -- assuming that plaintiff believes no issues of fact are in dispute -- has a motion for summary judgment been made.

4. Plaintiff's failure to prosecute this action in any way during the 21 months since the transfer motion was denied is, in itself, a reason to dismiss the complaint. However, an equally compelling reason exists. On each occasion when this Court has sought through a pre-trial status conference to move this case towards trial or other disposition, plaintiff -- represented by its in-house counsel -- has failed to appear at the scheduled session. It is as a direct result of these failures by plaintiff that the case appears on the Court's docket two years after removal with no discovery having been completed and no pre-trial conferences having been held.

5. The docket sheet shows that on December 13, 1973, plaintiff missed a status conference and the case was dismissed. After the case was restored on January 31, 1974, plaintiff did absolutely nothing until March 18, 1975, when it missed another

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
NATIONAL EQUIPMENT RENTAL, LTD., :

Plaintiff, : 73 Civ. 825 JRB

- against - :

BERNARD QUINTIN and THOMAS QUINTIN, :
individually and d/b/a THE QUINTIN :
COMPANY co-partners under the laws :
of the State of California, and :
DOROTHY K. QUINTIN, :

Defendants. :

Affidavit

-----X
MICHAEL S. OBERMAN, being duly sworn, deposes and says:

1. I am associated with the law firm of Nickerson, Kramer, Lowenstein, Nessen, Kamin & Soll, counsel to the defendants. I make this affidavit in opposition to plaintiff's motion to restore the action to the calendar and in support of an award of attorney's fees to defendants.

Background of case: two years of inactivity marked by plaintiff's repeated failure to appear

2. This action, alleging breach of contract, was commenced in Supreme Court, Nassau County, in May 1973. Upon petition of defendants, the case was removed to this Court on June 7, 1973. Defendants thereafter moved in July 1973 to transfer the action to the Central District of California; defendants, operators of a family business in California, had entered the contract

pre-trial conference. The case was once again dismissed. Plaintiff moved to once again restore the action, and the motion was set down for April 22, 1975. On that date, too, plaintiff failed to appear. For each non-appearance, plaintiff's counsel provided similar sounding "valid excuses": heavy traffic, clerical oversight, flat tire.

Prejudice to defendants:
 confusion in coordination
and unnecessary legal fees

6. However valid the excuses of plaintiff's counsel may or may not be, it is certain that the prejudice to defendants has been real. Defendants began with the problem of being California citizens, whose family business is conducted entirely in California, trying to defend a New York litigation. I understand that plaintiff's failure to prosecute, coupled with the "off-again-on-again" history of the action caused by the several failures to appear, have aggravated this problem, resulting in confusion in coordination between defendants, their regular counsel in California, and their New York counsel specially retained for this suit. Indeed, the original New York counsel withdrew with leave of the Court; for the last 15 months, defendants have been advised on the status of the case by their California counsel. Moreover, plaintiff's failures to appear caused defendants to incur otherwise unnecessary legal costs.

7. Our firm was retained on May 21, 1975 especially to appear at the May 22 hearing on plaintiff's motion to restore the action. To date, our involvement has been limited exclusively

to the preparation for, and attendance at, the hearing and to the drafting of the affidavits and proposed order requested by the Court. For this work, defendants will be billed the amount of \$697.45 which was computed as follows:

My time is billed at the rate of \$55 per hour, and I have spent 10-3/4 hours on the matter; the charge for my time is thus \$591.25. On May 21, 1975, I billed 2-3/4 hours. This time was spent conferring by telephone with Jay J. Wall, California counsel to defendant Thomas Quintin; conferring with Mary R. Hardin of our office, through whom the matter was referred to us; meeting with a partner of Golenbock and Barell, former counsel of record to defendants; reading the litigation papers filed in the case; and preparing for the May 22 hearing.

I billed 4-1/2 hours on May 22. During that day, I travelled to and from Court and appeared at the hearing; conferred with Mr. Wall after the hearing; and began preparation of the documents requested by the Court.

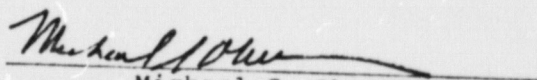
On May 23, I billed 1-1/4 hours. This time was spent completing my draft of the necessary papers and speaking with Mr. Wall's office. I billed 1-3/4 hours on Tuesday, May 27. This time was spent revising the papers to be submitted and conferring with Mr. Wall. Finally, I spent 1/2 hour on May 28, finalizing the papers to be submitted.

Ms. Hardin billed 1/2 hour on Wednesday, May 21, which reflects her discussions with Mr. Wall and me. Her billing rate is \$44 per hour and the charge for her time that day is \$22.00.

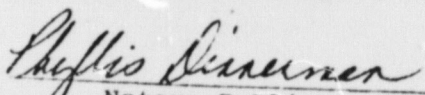
In addition to \$613.25 for lawyer's time charges, defendants will be billed by our office approximately \$84.20 in disbursements. This is based on a charge of \$4.20 for photocopying the papers filed with Court; \$40.00 for manuscript services, billed at \$10.00 per hour; \$5.00 in messenger fees; and \$35.00 in estimated long distance telephone charges for calls to Mr. Wall's office.*

8. Defendants have necessarily consulted other counsel with respect to this case. The amount of time, and the resulting charges, attributable to plaintiff's failure to appear at scheduled Court proceedings is described in the accompanying affidavit of Jay J. Wall.

For the reasons stated above, I urge the Court to dismiss the complaint with prejudice. In the event that the action is restored, I request that the Court award attorney's fees to defendants in the amount of \$1,200.00 .


Michael S. Oberman

Sworn to before me
this 28th day of May 1975.


Notary Public

PHYLLIS DINNERTMAN
Notary Public, State of New York
No. 31-450899
Qualified in New York County
Commission Expires March 30, 1977

*The exact telephone charges cannot be provided prior to receipt by our office of our telephone bill. The figure stated above is a conservative estimate derived by multiplying the applicable billing rate by the approximate length of the calls.

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 NATIONAL EQUIPMENT RENTAL, LTD.,
4 Plaintiff,

5 -against-

Civil Action File
No. 73C 825

6 BERNARD QUINTIN and THOMAS QUINTIN,
7 individually and d/b/a THE QUINTIN
8 COMPANY co-partners under the laws of
the State of California and DOROTHY K.
QUINTIN,

AFFIDAVIT OF JAY
J. WALL

9 Defendants

10
11 STATE OF CALIFORNIA)
12 COUNTY OF ORANGE) ss.

13 JAY J. WALL, being duly sworn, deposes and says:

14 That he is an attorney at law licensed to practice in
15 the State of California and is a member of the firm of WALL,
16 FERGUS & SWANSON with offices located at 1345 North Grand
17 Avenue, Santa Ana, California, 92701. That WALL, FERGUS &
18 SWANSON have represented the defendants in the above captioned
19 matter in California, with respect to the within entitled
20 matter since on or about February 28, 1975.

21 This deponent alleges that they were originally contacted
22 by the defendants for the purpose of determining the status of
23 the within matter after receipt by the clients of a notice from
24 the Court indicating that a Status Report had been set down for
25 March 18, 1975, at 9:30 a.m.

26 That previous to being represented by this office,
27 defendants were represented by another California attorney,
28 EDMOND RALPH ANDERSON, JR. That prior to consultation with
29 this office, it had been determined by Mr. Anderson's office
30 through conferences and consultations with the clients, the
31 defendants herein, that the within matter had been dismissed
32 and was subject to a motion to reopen by the plaintiffs.

WALL, FERGUS AND SWANSON
ATTORNEYS AT LAW
1345 NORTH GRAND AVENUE
SANTA ANA, CALIFORNIA 92701
TELEPHONE 547-8388

WALL FERGUS AND SWANSON
ATTORNEYS AT LAW
1345 NORTH GRAND AVENUE
SANTA ANA, CALIFORNIA 92701
TELEPHONE 847-8368

24
1 A determination of these facts was made between January 15,
2 1974 and March, 1974 for which the clients incurred legal
3 fees for approximately three hours of time.

4 There was complete inaction by the plaintiff from March
5 1974 until the notice referred to above requiring a Status
6 Report for March 18, 1975 and upon receipt of said notice, the
7 deponent's law offices were contacted. Thereafter, and on or
8 about February 28, 1975, deponent conferred with one of the
9 defendants, THOMAS QUINTIN, regarding the background of the
10 within litigation.

11 That thereafter on March 18, 1975, telephone calls were
12 made to the New York attorneys for the plaintiff, to the Clerk
13 of the Court and to independent counsel in New York. On March
14 20, 1975, letters were sent to the Clerk of the Court, the
15 client and to the New York attorneys for the plaintiff.
16 On March 31, 1975, documents were received from the Court
17 and reviewed as well as a letter from the plaintiff's attorneys
18 and a notice of motion filed by plaintiff's attorneys.

19 On or about April 1, 1975, there was again a review
20 of the documents submitted by the plaintiff's attorneys in
21 support of a motion and/or Status Report. On April 4, 1975,
22 plaintiff's attorneys were contacted regarding the pending
23 motion and a letter was sent to the attorneys.

24 On April 22, 1975, it was determined that the plaintiff
25 did not pursue their motion in the within Court.

26 On May 5, 1975, deponent reviewed a letter from the
27 plaintiff's attorneys and an Affidavit of plaintiff's attorney.
28 On May 12, 1975, a conference was had with the clients regarding
29 the motion and the status of the matter. On May 14, 1975, an
30 Affidavit was drafted on behalf of THOMAS QUINTIN in opposition
31 to plaintiff's motion and on May 15, 1975, the Affidavit was
32 reviewed with the client and the Affidavit was re-drafted. On

1 May 19, 1975, a letter was addressed to the Clerk of the Court
2 enclosing the above mentioned Affidavit along with an Affidavit
3 of Proof of Service by Mail showing service on the plaintiff.

4 On May 21, 1975, in order to have representation at
5 the May 22nd hearing, deponent contacted Attorney Mary Hardin
6 of the firm of NICKERSON, KRAMER, LOWENSTEIN, NESSEN, KAMMIN &
7 SOLL in New York, and discussed the matter with her and was
8 subsequently contacted by a lawyer of the firm, Michael Oberman
9 and another discussion ensued. On May 22, 1975, another telephone
10 conference was had with Attorney Michael Oberman and on May 27,
11 1975, further telephone conferences were had with Attorney
12 Michael Oberman and the within Declaration was prepared.

13 That each and all of the aforementioned acts were done
14 by the deponent and his firm, and memorandum was made for each
15 and all of the aforementioned acts, for the purpose of opposing
16 the plaintiff's motion to set aside the dismissal of the matter
17 and for the purpose of determining the status of the matter and
18 representing to the Court the status of the matter.

WILL FERGUS AND SWANSON
ATTORNEYS AT LAW
1248 NORTH GRAND AVENUE
SANTA ANA, CALIFORNIA 92701
TELEPHONE 947-8288

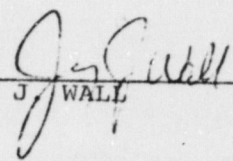
19 Since the filing of this case in the Supreme Court of
20 the State of New York, County of Nassau, by the plaintiff
21 sometime in 1974, the plaintiff's course of conduct has been one
22 of harassment and the repetition of status reports, dismissal,
23 motion to reopen, status report and further dismissal has high-
24 lighted plaintiff's lackadaisical prosecution of this action.
25 During all of this time, plaintiff has not conducted, requested
26 or sought any discovery. It appears that plaintiff is doing
27 nothing to bring the within matter to trial and their record
28 indicates one of harassment and the incurring of needless costs
29 and expenses for attorneys by the defendants for counsel in
30 California and in New York and all of which services are not
31 rendered to bring the matter to trial, but only to restore it
32 to the calendar.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

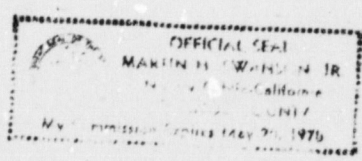
The deponent, as a member of the firm of WALL, FERGUS & SWANSON, bills on behalf of the firm, at the rate of \$65.00 per hour, for time he spends on all matters and a summary of the billing and time allotted to the items set forth therein and a memorandum is set forth in the Exhibit "A" attached hereto and incorporated by reference. The total billable time attributable to deponent and his firm arising out of the matters set forth herein from February 28, 1975 to date is \$945.75.

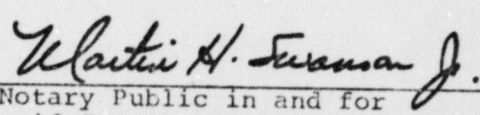
In addition, deponent estimates that long distance telephone calls to New York including taxes are \$40.00.

Also attached hereto is the previous Declaration filed by THOMAS QUINTIN in the within matter as Exhibit "B".


JAY J. WALL

Subscribed and sworn to before me this 27th day of May, 1975, at Santa Ana, California.




Notary Public in and for
said County and State

WALL, FERGUS AND SWANSON
ATTORNEYS AT LAW
1345 NORTH GRAND AVENUE
SANTA ANA, CALIFORNIA 92701
TELEPHONE 847-8363

MEMORANDUM OF TIME SPENT

WALL, FERGUS AND SWANSON
ATTORNEYS AT LAW
1345 NORTH GRAND AVENUE
SANTA ANA, CALIFORNIA 92701
TELEPHONE 947-8365

1			
2			
3	February 28, 1975	Office conference with TOM	
4		QUINTIN re Status Report set	
		for March 18, 1975	1.0
5	March 18, 1975	Telephone call to New York	
6		Attorneys re Status Report	.3
7		Telephone call to Attorney	
		Jacobskind re Status Report	.3
8		Telephone call to Clerk, Mr.	
9		Agnello re Status Report	.3
10		Telephone call to client to advise	
		of actio..	.2
11	March 20, 1975	Letter to Clerk of Court	.5
12		Letter to Client re Status Report	.3
13		Letter to New York Attorneys re	
		Status Report	.5
14	March 21, 1975	Review of letter from New York	
15		Attorneys	.3
16		Review of Court Record received	.3
17		Review of Notice of Motion for	
18		April 7, 1975	.2
19	April 1, 1975	Review of documents for Motion	
		and/or Status Report set for	
20		April 7, 1975	.3
21	April 4, 1975	Telephone call to Attorney Heller	
		re Motion and Report	.3
22		Letter to Attorney Heller re	
23		Motion and Continuance	.5
24	April 22, 1975	Determination of non-appearance	
		of moving party on Motion	.3
25	May 5, 1975	Review letter from Attorne	
26		Heller,	.2
27		Review of Affidavit of Heller	
		re Motion	.5
28	May 12, 1975	Conference with client re Motions	
29		and case status	1.2
30	May 14, 1975	Draft of Affidavit of THOMAS	
		QUINTIN in Opposition to Motion	1.5
31	May 15, 1975	Review of Affidavit with client	
32		and re-draft of Affidavit of	
		THOMAS QUINTIN	1.5

WALL, FERGUS AND SWANSON
ATTORNEYS AT LAW
1345 NORTH GRAND AVENUE
SANTA ANA, CALIFORNIA 92701
TELEPHONE 547-8369

28

1	May 19, 1975	Letter to Clerk of Court Enclose Affidavit of QUINTIN; Affidavit of Service of Jacobs	.5
2			
3	May 21, 1975	Telephone call to Attorney Hardin re New York representation for May 22, 1975 Motion and memorandum	.5
4			
5			
6		Telephone call from Attorney Oberman re review for May 22, 1975 Motion and memorandum	.75
7			
8	May 22, 1975	Telephone call from Attorney Oberman re hearing and memorandum	.5
9	May 27, 1975	Preparation of Affidavit of JAY J. WALL for delivery to New York attorneys	1.5
10			
11		Telephone call from Attorney Oberman re Affidavit	.3
12			
13		TOTAL TIME	14.55
14			
15	14.55 hours at \$65.00 per hour		\$ 945.75
16			
17		Total Estimated Long Distance Calls	40.00
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			
29			
30			
31			
32			

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 NATIONAL EQUIPMENT RENTAL, LTD.,
4 Plaintiff,

5 -against-

Civil Action File
No. 73C 825

6 BERNARD QUINTIN and THOMAS QUINTIN,
7 individually and d/b/a THE QUINTIN
8 COMPANY co-partners under the laws of
the State of California and DOROTHY R.
QUINTIN,

9 Defendants

10
11 STATE OF CALIFORNIA)
12 COUNTY OF ORANGE) ss.

13 THOMAS QUINTIN, being duly sworn, deposes and says:

14 That he is one of the defendants in the within entitled
15 matter and is fully familiar with all the facts herein and he
16 makes this Affidavit on behalf of himself and the other de-
17 fendants similarly situated.

18 That all defendants have a good defense to the within
19 action as set forth in their Answer filed on or about October
20 3, 1973.

21 By reason of the distance involved between the plaintiff
22 and defendants, a motion was made in this Court to remove the
23 matter to the United States District Court for the Central
24 District of California. That motion was denied in 1973. Since
25 that time and on or about three different occasions, the
26 Court has at the times set for a Status Report dismissed the
27 action. The plaintiff, through their attorneys, filed a motion
28 to have the matter restored. In the first instance, the
29 plaintiff's counsel claimed they were delayed "as a result of
30 heavy traffic" and because of unusual and heavily congested
31 traffic"; on the second occasion, counsel for the plaintiff did
32 not appear because defendant's associate, "neglected to note on

1 his diary or on the diary for the firm that this matter had been
2 restored for a Status Report on March 18, 1975"; on the third
3 time, counsel for the plaintiff stated that "unfortunately he
4 had a flat tire while driving to the Court and was unable to
5 appear in Court on time".

6 It would appear that the repetition of a similar alibi
7 for restoring the matter to the calendar of this Court would
8 not be in order and the Court should not therefore allow the
9 matter to be restored to the calendar at this time but the
10 matter should remain dismissed and terminated.

11 The within case has been pending for many years in
12 this Court and the defendants and each of them have previously
13 engaged counsel. As a result of the previous orders of the
14 Court, defendants found that it was no longer necessary to have
15 counsel since the matter was dismissed. A determination was
16 made by other counsel in California that the matter was dismissed
17 and no notice was ever received that the matter was restored to
18 the calendar until the recent notice requesting a Status Report.
19 The defendant has again engaged counsel, the law firm of WALL,
20 PERCUS & SWANSON, with offices located in Santa Ana, California,
21 for the purpose of investigating this matter and have been
22 advised that the matter was presently dismissed, subject to a
23 motion by the plaintiff to restore the matter.

24 It would appear to me that the plaintiff has not diligently
25 prosecuted this action and should be disqualified from being
26 allowed to restore the matter to the calendar at this late time.
27 In the event that this Court determines that the motion is well
28 taken and should be granted, I would respectfully request that
29 the Court grant the motion restoring the matter, but subject to
30 requiring the matter to be transferred to the United States District
31 Court for the Central District of California. This would elimi-
32 nate the undue burden of time, distance and expense involved for

1 the defendants in this matter in the present Court and should be
2 granted as a result of the negligence on the part of plaintiff
3 and/or their counsel.

4 It would appear that plaintiff makes a habit of the
5 procedure set forth in this action based on their own affidavit
6 and that nothing more than delay is being caused in the matter,
7 which causes unbearable expenses to the defendants and each of
8 them.

9 Your deponent respectfully requests therefore that the
10 previous order dismissing this matter be affirmed and that no
11 motion restoring the matter to the calendar be granted. In the
12 alternative, your deponent respectfully requests that the matter
13 be transferred to the United States District Court for the Central
14 District of California and be restored to the calendar there
15 to be set for trial. In the event the Court grants neither of
16 the aforementioned motions or alternatives, it is respectfully
17 requested that the matter be set down for trial at a reasonable
18 time considering the distance of the defendants from the place
19 of trial. The defendants and each of them are ready, willing
20 and able to proceed to trial as required and have a good and
21 adequate defense to the allegations of plaintiff, and have so
22 advised their attorneys. That their attorneys have concluded
23 that there is a good and adequate defense.

24

25 15/1 Thomas Quintin
26 : c THOMAS QUINTIN

27 Subscribed and sworn to before me this 19th day of May, 1975,
28 at Santa Ana, California.

29 15/1 Notary Public
30 Notary Public in and for said
31 County and State
32

STATE OF CALIFORNIA
COUNTY OF

(VERIFICATION — 446, 2015 S.C.C.P.)

I am the

in the above entitled action or proceeding. I have read the foregoing

and know the contents thereof, and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe it to be true.

I certify (or declare), under penalty of perjury,* that the foregoing is true and correct.

Executed on (date) at (place) California

Signature

(PROOF OF SERVICE BY MAIL — 1013a, 2015 S.C.C.P.)

STATE OF CALIFORNIA
COUNTY OF ORANGE

I am a resident of the county aforesaid, I am over the age of eighteen years and not a party to the within entitled action. my business address is

1345 North Grand Avenue, Santa Ana, California 92701

On May 19, 19 75, I served the within AFFIDAVIT

on the interested parties

in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Santa Ana, California addressed as follows:

GERALD S. JACOBS, Esq.
Attorney at Law
417 Lakeville Road
Lake Success, New York 11040

I certify (or declare), under penalty of perjury,* that the foregoing is true and correct.

Executed on May 19, 1975 at Santa Ana California

JENNIFER RYAN

Jennifer Ryan Signature

*Both the verification and proof of service by mail forms, being signed under penalty of perjury, do not require notarization.

L
Bartels

33

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.

FEB 1974 ★

NATIONAL EQUIPMENT RENTAL, LTD.

Plaintiff,

-against-

BERNARD QUINTIN and THOMAS QUINTIN,
individually and d/b/a THE QUINTIN
COMPANY co-partners under the laws
of the State of California, and
MICROTHY K. QUINTIN,

Defendants.

11:41 AM
P.M.
73 Civ. 825
JUDGE BARTELS

ORDER

A motion having been made by the firm of Golenbock and Barell, for an order relieving the firm as attorneys of record for all defendants in this action, and Golenbock and Barell having submitted the affidavit of Leonard W. Wagman, Esq., sworn to the 12th day of December 1973, in support of said motion; and no opposition having been made thereto, it is

ORDERED that the said motion is granted and that the firm of Golenbock and Barell be and hereby is relieved as attorneys of record for all defendants in this action.

Dated: February 7, 1974

Joseph R. Bartels
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

34

-----x
NATIONAL EQUIPMENT RENTAL, LTD.,

Plaintiff,

-against-

BERNARD QUINTIN and THOMAS QUINTIN,
individually and d/b/a THE QUINTIN
COMPANY, co-partners under the laws
of the State of California, and
DOROTHY K. QUINTIN,

AFFIDAVIT

73 Civ 825

Defendants.
-----x

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

LEONARD W. WAGMAN, being duly sworn, deposes and says:

1. I am a member of the firm of Golenbock and Barell, attorneys of record for defendants Bernard Quintin and Thomas Quintin, individually and d/b/a the Quintin Company, and Dorothy K. Quintin. I am fully familiar with the instant action and have personal knowledge of the facts set forth below.

2. I make this affidavit in support of the motion of Golenbock and Barell for an order, pursuant to Rule 4(c) of the general rules of the United States District Court for the Eastern District of New York, relieving the firm as attorneys of record for defendants herein.

3. I am compelled to make this motion because for the past several months I have been unable to establish any contact with the defendants or with their California attorney by whom the case was initially referred to my firm. I have not received any response to my numerous telephone calls and letters to the forwarding attorney. My telephone calls to the client also have gone unanswered.

4. We have attempted, but have been unable to obtain information essential to an evaluation of the defendants position in the action, including: (i) whether an independent action against the manufacturer of the equipment involved herein has been instituted in California, and (ii) the acceptability of engaging in settlement negotiations.

5. Consequently we have been deprived of information essential to the proper representation of our clients' interest and, accordingly, must respectfully request to be relieved of our position as attorneys of record.

HISTORY AND
POSTURE OF THE CASE

6. Defendants, who are all residents and citizens of the State of California, were served with the summons and complaint in the instant action in California on or about May 8, 1973.

7. Shortly thereafter, and on or about May 15, 1973, we received a letter from a California attorney, Kenneth J. Golden, of the California Law firm of Golden and Neal, requesting that we undertake to represent his clients, the defendants herein.

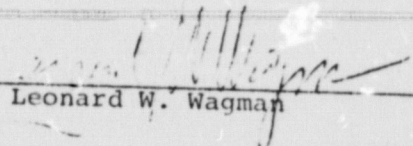
8. We appeared as attorneys of record for defendants and petitioned for removal of the action from the Supreme Court of the State of New York County of Nassau, where the action was commenced, to the Federal District Court for Eastern District of New York.

9. We then moved, in the interests of justice and for the convenience of witnesses and parties, to transfer the action to the Federal District Court for the Central District of California, and upon denial of our motion, served an answer to the complaint.

10. There have been no other proceedings in the instant action. Indeed, since we have been unable to establish contact with our clients and their local California attorney, we have been unable to proceed further in this action.

CONCLUSION

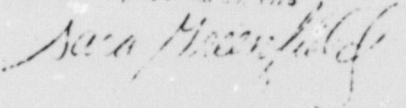
Accordingly the firm of Golenbock and Barell respectfully requests that the Court enter an order relieving the firm of its position as attorneys of record for all defendants herein.


Leonard W. Wagman

Sworn to before me this

1st day of December 1973

SARA GREENFIELD
Notary Public, State of New York
100 W. 42nd St.
Quarantine in 1973, New York
Commission Expires March 22, 1975



STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

37

Rachel Steinberg, being duly sworn, deposes and says: I am not a party to the action, am over eighteen years of age, and am employed by Golenbock and Barell, attorneys of record for defendants herein.

On December 12, 1973, I served the within Notice of Motion to Relieve Attorneys of Record and Affidavit of Leonard W. Wagman, Esq. upon the following attorneys in this action:

Gerald S. Jacobs, Esq.
410 Lakeville Road
Lake Success, New York 11040

Kenneth J. Golden, Esq.
Golden and Neal
7842 Westminister Avenue
Westminister, California 92683

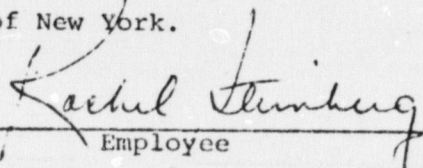
and upon:

Messrs. Bernard and Thomas Quintin
The Quintin Company
3303 Harbor Boulevard
Building H, Suite 9
Costa Mesa, California

The Quintin Company
4524 West First Street
Santa Ana, California

Ms. Dorothy Quintin
541 Sturgeon Drive
Costa Mesa, California

by depositing a true copy of same enclosed in a postpaid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.


Employee

Sworn to before me this
12th day of December, 1973.

Notary Public

37A

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
JUN 25 1973
TIME A.M. _____
P.M. _____

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
NATIONAL EQUIPMENT RENTAL, LTD.,
Plaintiff,

-against-

STIPULATION

BERNARD QUINN and THOMAS QUINTIN,
individually and d/b/a THE QUINTIN
COMPANY, co-partners under the laws
of the State of California, and
DOROTHY K. QUINTIN,

Defendants.

-----X
IT IS HEREBY STIPULATED AND AGREED, by and between
the undersigned, that the time for defendants to answer or move
with respect to the summons and complaint in this action be and
the same hereby is extended to and including July 5, 1973.

Dated: Lake Success, N.Y.
June 14, 1973

GERALD S. JACOBS
Attorney for Plaintiff

Gerald S. Jacobs

GOLENBOCK AND BARELL
Attorneys for Defendants

Golenbock and Barell

Dated: Brooklyn, NY
June 27, 1973

SO ORDERED:

Seamus P. Bartley
U.S.D.J.

(3)

the person so served to be the person mentioned and described in said papers as the
Sworn to before me, this day of 1973 personally. Deponent knew the
therein.

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
★ SEP 11 1973 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
NATIONAL EQUIPMENT RENTAL, LTD., :
Plaintiff, :
-against- :
BERNARD QUINTIN and THOMAS QUINTIN, :
individually and d/b/a THE QUINTIN :
COMPANY, co-partners under the laws :
of the State of California, and :
DOROTHY K. QUINTIN, :
Defendants. :
-----X

TIME A.M. _____
P.M. _____

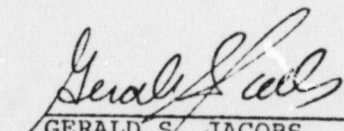
STIPULATION

73 Civ. 825

JRB

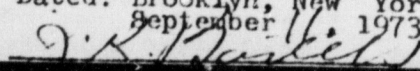
34 IT IS HEREBY STIPULATED AND AGREED, by and between
the undersigned, that the time for defendants to answer ~~on~~
~~move with respect to~~ the summons and complaint in this action
be and the same hereby is extended to and including September 28,
1973.

Dated: New York, New York
August 28, 1973


GERALD S. JACOBS
Attorney for Plaintiff

GOLENBOCK AND BARELL
Attorneys for Defendants

By: Leonard W. Wagonman
A Member of the Firm

SO ORDERED:
Dated: Brooklyn, New York
September 11, 1973


initialed

Gerald S. Jacobs
Attorney at Law

File **FILED** 39
U. S. DISTRICT COURT E.D. N.Y.

★ OCT 15 1973 ★

410 Lakeville Road
Lake Success, N.Y. 11040
TIME A.M. *10:40*
P.M.
(212) 348-1005

October 15, 1973

Hon. John Bartels
U.S. District Court
225 Cadman Plaza East
Brooklyn, N.Y.

RE: NATIONAL EQUIPMENT RENTAL, LTD.
v. QUINTIN, et al 73C825

Dear Sir:

Upon consent of the attorney's for the respective parties to the above captioned matter we respectfully request that the Status Report scheduled for October 16, be adjourned for at least one month.

The reasons for the request are that the parties are still investigating certain information and the attorney's for the defendants are having difficulty in communicating with their counterpart in California. In addition the attorney for the plaintiff is presently preparing a motion for Summary Judgment.

Please acknowledge your consent to the adjournment by signing and returning the copy of this letter.

Very truly yours,

Gerald S. Jacobs
Gerald S. Jacobs

GSJ/es
cc. Goldenbock & Barrell
Adjourned Date:

Adjourned to Nov. 19, 1973

CLERK
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ DEC 13 1973 ★

TIME A.M. _____
P.M. _____

NATIONAL EQUIPMENT

Plaintiff

-VS-

QUINTIN

Defendant

ORDER OF DISMISSAL

Docket No. 73 C-825

FILED

The above action having been called on
12/13/73 for a pretrial status report, and to set
the case down for trial, and the Plaintiff not appearing after
having been duly notified, it is hereby

ORDERED that the complaint be and hereby
is dismissed with permission to the Plaintiff to move to vacate
the dismissal, within thirty days, upon furnishing an affidavit
showing (1) a good cause of action, and (2) a valid excuse for
failure to appear.

Dated: Brooklyn, N.Y.,

12/13/73

James R. Bartley
United States District Judge

14

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CLOSED

4
FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ MAR 18 1975 ★

TIME A.M. _____
P.M. _____

ORDER OF DISMISSAL

NATIONAL EQUIPMENT RENTAL
Plaintiff

-VS-

BERNARD QUININ, et al

Defendant

Docket No. 73 C 825

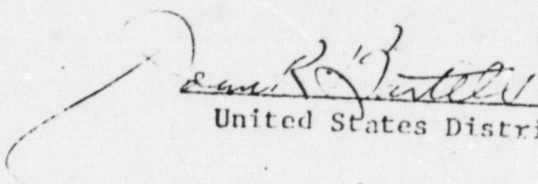
M FILMED

The above action having been called on
MARCH 15, 1975 for a pretrial status report, and to set
the case down for trial, and the Plaintiff not appearing after
having been duly notified, it is hereby

ORDERED that the complaint be and hereby
is dismissed with permission to the Plaintiff to move to vacate
the dismissal, within ^{twenty} ~~thirty~~ days, upon furnishing an affidavit
showing (1) a good cause of action, and (2) a valid excuse for
failure to appear. P.R.B.

Dated: Brooklyn, N.Y.

March 18 1975


United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

73C 825 42

NATIONAL EQUIPMENT RENTAL, LTD.,

Plaintiff,

-against-

BERNARD QUINTIN and THOMAS QUINTIN,
individually and d/b/a THE QUINTIN
COMPANY, co-partners under the laws
of the State of California, and
DOROTHY K. QUINTIN,

Defendants.

PETITION FOR REMOVAL
Civil Action File No.

TO THE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK:

The petitioners, defendants herein, are appearing for
purpose of removal of this action from the Supreme Court of the
State of New York, Nassau County, to the United States District
Court for the Eastern District of New York and respectfully show,
upon information and belief:

1. Plaintiff, National Equipment Rental, Ltd., commenced
an action against petitioners, defendants herein, in the Supreme Court
of the State of New York in and for the County of Nassau, by service
of a summons and complaint, by certified mail, return receipt requested,
postmarked May 3, 1973, and received on or about May 8, 1973. (A copy
of the summons and complaint is annexed hereto as Exhibit "A").

2. A stipulation was entered into extending defendants time
to answer or move with respect to the summons and complaint to and in-
cluding June 14, 1973.

3. The instant action is one of which this Court has
original jurisdiction under the provisions of 28 U.S.C. §1332,
and is one which may be removed to this Court by petitioners,
defendants herein, pursuant to the provisions of 28 U.S.C. §1441,
in that it is a civil action wherein the matter in controversy

Exhibit A

Representative
ALL 4 COPIES

THOMAS QUINTIN
(IF CONFIRMATION)

exceeds the sum or value of \$10,000 exclusive of interest and costs, and is between citizens of different states.

3. At all times relevant hereto, according to the complaint, plaintiff was and is a Delaware corporation having its principal place of business in Nassau County and is a citizen of the State of New York.

4. At all times relevant hereto, defendants Bernard Quintin and Thomas Quintin, individually and doing business as The Quintin Company, Co-Partners under the laws of the State of California, located at 4524 West First Street, Santa Ana, California, and Dorothy Quintin, resided in Orange County, California.

5. The matter in controversy is alleged to be in an amount no less than \$27,291.60, exclusive of interest and costs.

6. The required undertaking for removal is annexed hereto as Exhibit "B".

WHEREFORE, petitioners pray that this cause be removed to this Court and proceed as a removed action in accordance with law.

Dated: New York, New York
June 7, 1973

GOLENBOCK AND BARELL
Attorneys for Defendants
60 East 42nd Street
New York, New York 10017
(212) 986-3300

By *James M. Wagon*
A Member of the Firm

VERIFICATION

STATE OF NEW YORK)
 : ss.:
 COUNTY OF NEW YORK)

LEONARD W. WAGMAN, being duly sworn, deposes and says that deponent is a member of the firm of Golenbock and Barell, attorneys for petitioners in the within action; that deponent has read the foregoing and knows that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

Leonard W. Wagman
 Leonard W. Wagman

Sworn to before me this
 7th day of June, 1973.

Robert S. Golenbock
 ROBERT S. GOLENBOCK
 Notary Public, State of New York
 No. 41-150675
 Qualified in Queens County
 Commission Expires March 30, 1976

Exhibit A

VICE-PRESIDENT - MINICOPY/IMA
 (Representative
 H ALL 4 COPIES)

THOMAS GREENE
 (IF CORPORATION AFTER CORPORATE SEALS)

County of NASSAU

NATIONAL EQUIPMENT RENTAL, LTD.,

against

Plaintiff(s)

Plaintiff(s) designates

Nassau

County as the place trial

The basis of the venue is

Plaintiff's place of business

Summons with Notice

Plaintiff resides at

410 Lakeville Road

Lake Success, N.Y.

County of Nassau

BERNARD QUINTIN and THOMAS QUINTIN, individually and d/b/a
THE QUINTIN COMPANY, Co-Partners under the Laws of the State
of California and DOROTHY K. QUINTIN,

Defendant(s)

To the above named Defendant(s)

You are hereby summoned

to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated,

Defendant's Address:

Notice: The object of this action is

The relief sought is

GERALD S. JACOBS

Attorney(s) for Plaintiff(s)

Office and Post Office Address

410 Lakeville Road

Lake Success, N.Y. 11040

212-343-1005

Upon your failure to appear, judgment will be taken against you by default for the sum of \$
with interest from 19 and the costs of this action.

FOURTH: That plaintiff in accordance with the terms of said lease, duly notified said defendant of its default, but defendant failed to cure the same within the time limited under the terms of said lease.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

NATIONAL EQUIPMENT RENTAL, LTD.,

Plaintiff,

-against-

BERNARD QUINTIN and THOMAS QUINTIN,
individually and d/b/a THE QUINTIN
COMPANY, Co-Partners Under the Laws of
the State of California and DOROTHY K.
QUINTIN,

Defendants.

The plaintiff above named by GERALD S. JACOBS, attorney, complain-
ing of the defendants, respectfully shows to the Court and alleges:

FIRST CAUSE OF ACTION

FIRST: That at all times hereinafter mentioned, plaintiff was
and still is a Delaware corporation having its principal place of business
in Nassau County and having duly qualified to do business in the State of
New York.

SECOND: That heretofore plaintiff leased certain equipment to
BERNARD QUINTIN and THOMAS QUINTIN, individually and d/b/a THE QUINTIN
COMPANY, Co-Partners Under the Laws of the State of California pursuant to a
written lease designated 86 792A copy of which is attached hereto and marked
Exhibit A.

THIRD: That said defendant defaulted in paying the rentals due
under said lease for the month of January, 1973 and the months subsequent
thereto.

FOURTH: That plaintiff in accordance with the terms of said
lease, duly notified said defendant of its default, but defendant failed to
cure the same within the time limited under the terms of said lease.

FIFTH: That by reason of defendant's default as aforesaid, plaintiff in accordance with the terms of said lease declared all of the sums due thereunder due and payable, to wit, the sum of \$22,743.00, with interest thereon from January 10, 1973.

SIXTH: That no part of said sum has been paid although duly demanded, and there is presently due and owing from the defendant under the lease aforesaid, the sum of \$22,743.00, with interest thereon from January 10, 1973.

SECOND CAUSE OF ACTION AGAINST
DEFENDANT BERNARD QUINTIN and
THOMAS QUINTIN, individually and
d/b/a THE QUINTIN COMPANY, Co-
Partners Under the Laws of the
State of California

SEVENTH: Plaintiff repeats and reiterates each and every allegation contained in paragraphs marked "FIRST" through "SIXTH" inclusive of the complaint, as if fully set forth at length herein.

EIGHTH: That pursuant to the aforementioned lease agreement, in the event of a default the lessee became liable for all expenses of the lessor including legal expenses and attorney's fees equal to 20% of the unpaid balance.

NINTH: That by reason of the foregoing, the defendant is liable for attorney's fees in the amount of \$4,548.60, no part of which has been paid although duly demanded.

THIRD CAUSE OF ACTION AGAINST
DEFENDANT DOROTHY K. QUINTIN

TENTH: Plaintiff repeats and reiterates each and every allegation contained in paragraph marked "FIRST" through "NINTH" inclusive of the complaint, as if fully set forth at length herein.

ELFVFNTH: That the defendant, DOROTHY K. QUINTIN, unconditionally guaranteed all sums due and to become due to the lessor under the afore-mentioned lease by an instrument in writing, a copy of which is annexed hereto and marked Exhibit B.

TWELFTH: That by reason of the foregoing and pursuant to the default of the defendant BERNARD QUINTIN and THOMAS QUINTIN, individually and d/b/a THE QUINTIN COMPANY, Co-Partners Under the Laws of the State of California, plaintiff did make demand upon defendant DOROTHY K. QUINTIN to pay all sums due under said lease agreement, to wit, the sum of \$27,291.60, which sum the defendant DOROTHY K. QUINTIN failed and/or neglected to pay.

THIRTEENTH: That by reason of the foregoing, the defendant DOROTHY K. QUINTIN is indebted to the plaintiff in the sum of \$27,291.60 payment of which has been demanded and refused.

WHEREFORE, plaintiff demands judgment against the defendant
BERNARD QUINTIN and THOMAS QUINTIN, individually and d/b/a THE QUINTIN COMPANY,
Co-Partners Under the Laws of the State of California on the first and
second causes of action in the amount of \$27,291.60, together with interest
from January 10, 1973 and on the third cause of action against the defendant
DOROTHY K. QUINTIN in the amount of \$27,291.60, with interest from January 10,
1973, together with the costs and disbursements of this action.

GERALD S. JACOBS
Attorney for Plaintiff
Office & P.O. Address
410 Lakeville Road
Lake Success, N.Y. 11040

1. TERM: 36 months

2. RENTAL PAYMENTS: \$ 361.00 per month for the first 36 months,
\$ _____ per month for the next _____ months,
\$ _____ per month for the next _____ months,
\$ _____ per month for the next _____ months,
\$ _____ per month for the next _____ months.

3. ADVANCE RENTALS: \$ 722.00, payable at the time of signing of this schedule, to be applied to 1. 36th and 37th rental payments.

4. RENEWAL OPTION: \$ *

5. SECURITY DEPOSIT: \$ --

6. EQUIPMENT LOCATION: 4524 West 1st Street

7. LESSEE'S ADDRESS: Santa Ana, California

8. EQUIPMENT DESCRIPTION: 1 Burroughs L2301-608 Mini-Computer;
1 Burroughs A562 Tape Perforator; 1 Burroughs A581 Tape Reader

\$722.00 - 1st Annual Renewal payable in Advance
\$722.00 - 2nd Annual Renewal payable in Advance
\$361.00 - 3rd Annual Renewal payable in Advance

LIABILITY INSURANCE REQUIRED: \$100,000 Personal Injury \$25,000. Property Damage

1. **TERMS AND RENTAL NOTICES:** Subject to the conditions herein stated, this lease shall be for a period stated in the Schedule commencing with delivery to Lessee, its agent or a carrier, whichever shall be earlier. Lessee agrees to pay the total rent for the term, which shall be in the total amount of all rental payments stated in the Schedule, plus such additional rentals as are provided herein. All payments shall be made at the office of the Lessor specified below or at such other place as Lessor or Lessor's assignee may in writing designate. **Monthly in advance.**

2. **TITLE:** Lessor shall at all times retain title to the equipment. All documents of title and evidences of delivery shall be delivered to the Lessor. Lessee will not change or remove any insignia or lettering which is on the equipment at the time of delivery or which is thereafter placed thereon indicating Lessor's ownership thereof, and at any time during the lease term, upon request of Lessor, will affix to the equipment, in a prominent place, labels, plates or other markings supplied by Lessor stating that the equipment is owned by Lessor. Lessor may at Lessee's expense cause this lease to be filed, recorded, refiled, rerecorded or financing statements (which may be signed by the Lessor only if permitted by statute) to be filed as permitted or required by law. Lessee at its expense shall protect and defend Lessor's title, at all times keeping the equipment free from any legal process and/or encumbrances whatsoever, including, but not limited to, liens, attachments, levies and executions, and shall give Lessor immediate written notice thereof and shall indemnify Lessor for any loss caused by the failure of the Lessee to take action as provided herein.

3. PURCHASE, DELIVERY AND PREPAYMENTS: Lessee requests Lessor to purchase the equipment from a vendor selected by Lessee and arrange for delivery, which shall be deemed complete upon arrival at Lessee's premises or when otherwise received by Lessee's agent. If Lessee requests Lessor to make any payments to vendor or supplier, or if Lessor makes any such payment prior to delivery and acceptance, and if Lessee for any reason does not accept the equipment, Lessee shall, on demand by Lessor, pay Lessor any amounts theretofore paid or owing by Lessor in respect to the purchase of such item of equipment and upon such payment, Lessee shall be subrogated to Lessor's claims, if any, against the manufacturer or other supplier thereof and Lessee shall become entitled to such item, as-is where-is, without warranty, express or implied, by the Lessor with respect to any matter whatsoever, and Lessee shall indemnify and save Lessor harmless from any and all liability to the supplier thereof.

4. **CARE AND USE OF EQUIPMENT:** Lessee, at its own cost and expense, shall maintain the equipment in good operating condition, repair, and appearance, and protect same from deterioration other than normal wear and tear; shall use the equipment in the regular course of its business only, within its normal capacity, without abuse, and in a manner contemplated by the manufacturer thereof; shall not make modifications, alterations or additions to the equipment (other than normal operating accessories or controls), without the written consent of Lessor, which shall not be unreasonably withheld; shall not so affix the equipment to realty so as to change its nature to real property, and agrees that the equipment shall remain personal property at all times regardless of how attached or installed; shall keep the equipment on the premises where delivered, and shall not remove the equipment without the written consent of Lessor, which shall not be unreasonably withheld. All modifications, repairs, alterations, additions, replacements, substitutions, operating accessories and controls shall accrue to the equipment and become the property of the Lessor. Lessor shall have the right, during normal hours, to enter upon the premises where the equipment is located in order to inspect, observe or remove same, or otherwise protect Lessor's interest, and Lessee shall cooperate in affording Lessor the opportunity to do same. For the purpose of assuring Lessor that Lessor's equipment will be properly serviced, Lessee agrees to cause the equipment to be maintained pursuant to the manufacturer's standard preventive maintenance contract and/or recommendations.

5. **TAXES:** Lessee intends the rental payments in this lease to be net to the Lessor. Lessee shall comply with all laws and pay all taxes, including but not limited to sales and use taxes, excise taxes, personal property taxes and assessments, registration fees, freight and transportation charges and any similar charges imposed on the ownership, possession or use of the equipment during the term of this lease. Lessee shall pay to Lessor all costs and expenses incident to the operation, maintenance, defined, storage, encumbrance and repossession expenses in connection with the enforcement of this lease. In addition, after the due date thereof, Lessor shall have the right but shall not be obligated to pay the sums due to creditors and judgments with interest at the highest legal rate from the date of said payment, as an incidental rent, to be paid with the next rental payment. The rental set forth herein is based on the prime rate as of the date hereof. Lessee agrees that if there is an increase in the prime rate during the term hereof, the rental shall be increased in accordance therewith.

6. **ASSIGNMENT:** Lessee shall and does hereby indemnify and save Lessor harmless from and against all claims and demands of the owner or third parties.

6. **RENTAL RATE:** Lessee shall and does hereby indemnify and save Lessor harmless from any and all liability arising out of the operation, collection, possession, leasing, renting, operation, control, use, maintenance, delivery and/or return of the above described goods and conditions on the reverse side hereof are incorporated in and made a part of this agreement.

whereof the undersigned agree to all the terms and conditions set forth above and on the reverse side hereof, and in witness whereof, they have hereunto set their hands and seals, and have hereunto executed this lease. This lease shall be binding upon all parties, their successors, legal representatives and assigns.

DATE 8-18-72 1972 **BERNARD QUINTERIN & ASSOCIATES**

DATE 8-13-72, 1972
 BERNARD QUINNIN & THOMAS QUINNIN, Individual
 C/O THE QUINNIN COMPANY, Co-Partners of
 Under the name of THE QUINNIN COMPANY

By W. C. Vicks Vice President - Plaintiff
Authorized Representative

 (IF CORPORATION AFFIX CORPORATE SEAL)

 (IF CORPORATION AFFIX CORPORATE SEAL)

100-104412-1

RIDER TO LEASE NO. 96 792, SCHEDULE A, DATED December 7, 1972

BETWEEN NATIONAL EQUIPMENT RENTAL, LTD., LESSOR, AND BERNARD QUINTIN and
AS QUINTIN, INDIVIDUALLY and dba THE QUINTIN COMPANY, Co-Partners Under the
of The State of California, LESSEE.

17. Lessor shall not be responsible for any loss or damage caused by error in programming or instructions to the leased equipment, latent defect, wear and tear or gradual deterioration of the leased equipment, or loss of the service or use of the leased equipment or any part thereof. Lessee represents that the equipment selected by it is of a size, design and capacity for its use.

18. Lessee agrees that Lessor shall not be liable to Lessee or anyone else for any liability, claim, loss, damage or expense of any kind or nature caused directly or indirectly by:

1. The inadequacy of the equipment, or of any item supplied by the vendor or any other party.

2. Any deficiency with respect to any equipment, programming or training to be supplied to the lessor/lessee by the vendor or any other party.

3. The use or performance of any equipment.

4. Any interruption of use or loss of service or use or performance of any equipment.

5. Any loss of business or other consequence or damage, whether or not resulting from any of the foregoing.

BERNARD QUINTIN, and THOMAS QUINTIN,
Individually and dba THE QUINTIN COMPANY,
Co-Partners Under the Laws of The State of
California

By: Bernard Quintin
Bernard Quintin (title)

By: Thomas Quintin
Thomas Quintin

50

36 792

(Address of Letter)

The undersigned acknowledges notice of the intended assignment of the aforesaid Lease and hereby consents to such assignment and specifically agrees that this Guarantee is and shall be an open and continuing Guarantee and all obligations and liabilities to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon and shall continue in full force and effect, notwithstanding any (a) change in rentals or other obligations under said Lease, (b) renewals, modifications, additions or extensions thereto or extensions of time to perform any of the obligations thereunder; and waives notice of the assignment by NATIONAL EQUIPMENT RENTAL LTD., and waives notice of any such changes, renewals, modifications, additions, extensions or of any default by the Lessee thereunder. The undersigned further agrees and consents to any assignment of this Guarantee, in which event it shall enure to the benefit of any such assignee with the same force and effect as though the said assignee was specifically named herein and hereby waives any notice of any such assignment.

No invalidity, irregularity, or unenforceability of all or any part of this document shall render void or inoperative the foregoing provisions of this document.

This instrument shall be deemed to have been made in Nassau County, New York, and as part of the consideration for the Lessor's execution of the aforementioned Lease, the undersigned Guarantor hereby agrees that any and all actions or proceedings arising directly or indirectly from this Guarantee shall be litigated in courts having a situs within the State of New York, and the undersigned Guarantor hereby consents to the jurisdiction of any local, State or Federal Court located within the State of New York, and the undersigned Guarantor hereby waives personal service of any and all process, and consents that all such service of process may be made by certified or registered mail, return receipt requested, directed to the undersigned Guarantor at the address indicated below; and service so made shall be complete two (2) days after the same has been posted as aforesaid.

The undersigned, if more than one, shall be jointly and severally bound to any Guarantee, and this Guarantee is a pri-

Date: Sept. 8, 1972 (City and State) the day of 19

STATE OF *California*
COUNTY OF *Orange* 35.

to the known, and known to me to be the person(s) described in and who executed the foregoing instrument, and
(1) is (2) was (3) is (4) was (5) is (6) was (7) is (8) was (9) is (10) was (11) is (12) was (13) is (14) was (15) is (16) was (17) is (18) was (19) is (20) was (21) is (22) was (23) is (24) was (25) is (26) was (27) is (28) was (29) is (30) was (31) is (32) was (33) is (34) was (35) is (36) was (37) is (38) was (39) is (40) was (41) is (42) was (43) is (44) was (45) is (46) was (47) is (48) was (49) is (50) was (51) is (52) was (53) is (54) was (55) is (56) was (57) is (58) was (59) is (60) was (61) is (62) was (63) is (64) was (65) is (66) was (67) is (68) was (69) is (70) was (71) is (72) was (73) is (74) was (75) is (76) was (77) is (78) was (79) is (80) was (81) is (82) was (83) is (84) was (85) is (86) was (87) is (88) was (89) is (90) was (91) is (92) was (93) is (94) was (95) is (96) was (97) is (98) was (99) is (100) was (101) is (102) was (103) is (104) was (105) is (106) was (107) is (108) was (109) is (110) was (111) is (112) was (113) is (114) was (115) is (116) was (117) is (118) was (119) is (120) was (121) is (122) was (123) is (124) was (125) is (126) was (127) is (128) was (129) is (130) was (131) is (132) was (133) is (134) was (135) is (136) was (137) is (138) was (139) is (140) was (141) is (142) was (143) is (144) was (145) is (146) was (147) is (148) was (149) is (150) was (151) is (152) was (153) is (154) was (155) is (156) was (157) is (158) was (159) is (160) was (161) is (162) was (163) is (164) was (165) is (166) was (167) is (168) was (169) is (170) was (171) is (172) was (173) is (174) was (175) is (176) was (177) is (178) was (179) is (180) was (181) is (182) was (183) is (184) was (185) is (186) was (187) is (188) was (189) is (190) was (191) is (192) was (193) is (194) was (195) is (196) was (197) is (198) was (199) is (200) was (201) is (202) was (203) is (204) was (205) is (206) was (207) is (208) was (209) is (210) was (211) is (212) was (213) is (214) was (215) is (216) was (217) is (218) was (219) is (220) was (221) is (222) was (223) is (224) was (225) is (226) was (227) is (228) was (229) is (230) was (231) is (232) was (233) is (234) was (235) is (236) was (237) is (238) was (239) is (240) was (241) is (242) was (243) is (244) was (245) is (246) was (247) is (248) was (249) is (250) was (251) is (252) was (253) is (254) was (255) is (256) was (257) is (258) was (259) is (260) was (261) is (262) was (263) is (264) was (265) is (266) was (267) is (268) was (269) is (270) was (271) is (272) was (273) is (274) was (275) is (276) was (277) is (278) was (279) is (280) was (281) is (282) was (283) is (284) was (285) is (286) was (287) is (288) was (289) is (290) was (291) is (292) was (293) is (294) was (295) is (296) was (297) is (298) was (299) is (300) was (301) is (302) was (303) is (304) was (305) is (306) was (307) is (308) was (309) is (310) was (311) is (312) was (313) is (314) was (315) is (316) was (317) is (318) was (319) is (320) was (321) is (322) was (323) is (324) was (325) is (326) was (327) is (328) was (329) is (330) was (331) is (332) was (333) is (334) was (335) is (336) was (337) is (338) was (339) is (340) was (341) is (342) was (343) is (344) was (345) is (346) was (347) is (348) was

executed the same

[Signature]

Notary Public
(Affix Stamp and Seal)

Exhibit B

89.:

AFFIDAVIT OF PERSONAL SERVICE

being sworn, deposes and says, that deponent is not a party to the action, is over in court.

ORIGINAL

NO. 86 792 SCHEDULE A

NATIONAL EQUIPMENT RENTAL, LTD.

INCORPORATED IN CALIFORNIA, N. Y. 11002 — (212) 343-1000

NATIONAL EQUIPMENT RENTAL, LTD. hereby leases to the undersigned Lessee, and Lessee hereby leases and rents from Lessor, the equipment described in the schedule listed below and additional lease schedules (hereinafter collectively called "Schedules") subject to the terms and conditions set forth below and continued on the reverse side hereof.

SCHEDULE

1. TERM: 60 months
2. RENTAL PAYMENTS: \$394.58 per month for the first 60 months,
\$ per month for the next months,
\$ per month for the next months,
\$ per month for the next months,
\$ per month for the next months.
3. ADVANCE RENTALS: \$ --, payable at the time of signing of this schedule, to be applied to the rental payments.
4. RENEWAL OPTION: \$ --
5. SECURITY DEPOSIT: \$ 1,599.60
6. EQUIPMENT LOCATION: 4524 West 1st Street
7. LESSEE'S ADDRESS: Santa Ana, California
8. EQUIPMENT DESCRIPTION:
1 Burroughs I2301-608 Mini-Computer
1 Burroughs A562 Tape Perforator
1 Burroughs A581 Tape Reader
9. LIABILITY INSURANCE REQUIRED: \$100,000- Personal Injury \$25,000. Property Damage

1. **TERMS AND RENTAL NOTICES:** Subject to the conditions herein stated, this lease shall be for a period stated in the Schedules commencing with delivery to Lessee, its agent or a carrier, whichever shall be earlier. Lessee agrees to pay the total rent for the term, which shall be in the total amount of all rental payments stated in the Schedule, plus such additional rentals as are provided herein. All payments shall be made at the office of the Lessor specified below or at such other place as Lessor or Lessor's assignee may in writing designate. Monthly in advance

2. **TITLE:** Lessor shall at all times retain title to the equipment. All documents of title and evidences of delivery shall be delivered to the Lessor. Lessee will not change or remove any insignia or lettering which is on the equipment at the time of delivery or which is thereafter placed thereon indicating Lessor's ownership thereof, and at any time during the lease term, upon request of Lessor, will affix to the equipment, in a prominent place, labels, plates or other markings supplied by Lessor stating that the equipment is owned by Lessor. Lessor may at Lessee's expense cause this lease to be filed, recorded, refiled, re-recorded or financing statements (which may be signed by the Lessor only if permitted by statute) to be filed as permitted or required by law. Lessee at its expense shall protect and defend Lessor's title, at all times keeping the equipment free from any legal process and/or encumbrances whatsoever, including, but not limited to liens, attachments, levies and executions, and shall give Lessor immediate written notice thereof and shall indemnify Lessor for any loss caused by the failure of the Lessee to take action as provided herein.

3. **PURCHASE, DELIVERY AND PREPAYMENTS:** Lessee requests Lessor to purchase the equipment from a vendor selected by Lessee and arrange for delivery, which shall be deemed complete upon arrival at Lessee's premises or within 60 miles received by Lessee's agent. If Lessee requests Lessor to make any payments to vendor or supplier, or if Lessor makes any such payment prior to delivery and acceptance, and if Lessee for any reason does not accept the equipment, Lessee shall, on demand by Lessor, pay Lessor any amounts theretofore paid or owing by Lessor in respect to the purchase of such item of equipment and upon such payment, Lessee shall be subrogated to Lessor's claims, if any, against the manufacturer or other supplier thereof and Lessee shall become entitled to such item, as-is where-is, without warranty, express or implied, by the Lessor with respect to any matter whatsoever, and Lessee shall indemnify and save Lessor harmless from any and all liability to the supplier thereof.

4. **CARE AND USE OF EQUIPMENT:** Lessee, at its own cost and expense, shall maintain the equipment in good operating condition, repair, and appearance, and protect same from deterioration other than normal wear and tear; shall use the equipment in the regular course of its business only, within its normal capacity, without abuse, and in a manner contemplated by the manufacturer thereof; shall not make modifications, alterations or additions to the equipment (other than normal operating accessories or controls), without the written consent of Lessor, which shall not be unreasonably withheld; shall not so use the equipment to render it so as to change its nature to real property, and agrees that the equipment shall remain personal property at all times regardless of how attached or installed; shall keep the equipment on the premises where delivered, and shall not remove the equipment without the written consent of Lessor, which shall not be unreasonably withheld. All modifications, repairs, alterations, additions, replacements, substitutions, operating accessories and controls shall accrue to the equipment and become the property of the Lessor. Lessor shall have the right, during the term of the lease, to enter upon the premises where the equipment is located in order to inspect, observe or remove same, or to cause the same to be inspected, observed or removed, and Lessee shall cooperate in affording Lessor the opportunity to do same. For the purpose of this lease, Lessor shall be deemed to have properly serviced, Lessee agrees to cause the equipment to be maintained in accordance with the manufacturer's standard preventive maintenance contract and/or recommendations.

5. **NET LEASE:** Lessee intends the rental payments in this lease to be net to the Lessor. Lessee shall comply with all laws and regulations, including but not limited to sales and use taxes, excise taxes, personal property taxes and franchise taxes, registration fees, freight and transportation charges and any similar charges imposed on the ownership, use or lease of the equipment during the term of this lease. Lessee shall pay to Lessor all costs and expenses incurred by Lessee hereinafter defined, storage, caretaking and repossession expenses in connection with the enforcement of this lease. In case any charges, costs, taxes or expenses required to be paid by the Lessee under this lease are not paid by the Lessee within the time specified, Lessor shall have the right but shall not be obligated to pay this amount and interest at the highest legal rate from the date of said payment, an additional rent, to be paid by Lessee to Lessor. The rental set forth herein is based on the prime rate as of the date hereof. Lessee agrees that the rental shall be increased in accordance therewith.

6. **FORCE MAJEURE:** Lessee shall and does hereby indemnify and save Lessor harmless from any and all liability arising out of the use, operation, maintenance, control, use, maintenance, delivery and/or return of the equipment.

7. **ENTIRE AGREEMENT:** The terms and conditions on the reverse side hereof are incorporated in and made a part of this lease. Lessee hereby agrees to all the terms and conditions set forth above and on the reverse side hereof, and in witness whereof Lessee hereby executes this lease. This lease shall be binding upon all parties, their successors, legal representatives and assigns.

shall include all costs and expenses including attorney's fees incurred by Lessee in connection with this lease, including any such liability.

7. INSURANCE: Lessee shall keep equipment insured against all risks of loss or damage from every cause whatsoever for not less than the aggregate amount of unpaid total rent for the balance of the term of this lease, and shall carry such liability insurance, both personal injury and property damage, covering equipment. All such insurance shall be in the joint names of Lessor and Lessee, and such insurance shall be payable to Lessor, and all such liability insurance shall be in the joint names of Lessor and Lessee. Lessee shall pay the premiums therefor and deliver to Lessor the policies of insurance or certificates of insurance, or other evidence satisfactory to Lessor of such insurance coverage. Each insurer shall agree, by endorsement to the policy or policies issued by it or by independent instrument furnished to Lessor, that it will give Lessor 30 days written notice of the effective date of any alteration or cancellation of such policy. The proceeds of such insurance, as a result of loss or of damage to equipment, shall be applied at the option of Lessor, (a) toward the replacement, repair or expense of equipment which may be lost, stolen, destroyed or damaged or (b) toward payment of the obligation of Lessor hereunder. Lessor hereby irrevocably appoints Lessor as Lessee's attorney-in-fact to make claim for, receive proceeds of, and endorse all documents, checks or drafts received in payment for loss or damage under any said insurance policy. In case of the failure of Lessee to procure or maintain said insurance to comply with any other provision of this lease, Lessor shall have the right, but shall not be obligated, to effect such insurance or compliance on behalf of Lessee. In that event, the cost of such insurance, and expenses of Lessor in effecting such insurance or compliance shall be deemed to be additional rent, and shall be paid by Lessee with interest at highest legal rate to Lessor with the next monthly payment of rent.

8. DEFAULT: If (a) Lessee shall default in the payment of any rent or in making any other payment hereunder when due, or (b) Lessee shall default in the payment when due of any indebtedness of Lessee to Lessor arising under this lease, or (c) Lessee shall breach any warranty hereunder, or (d) Lessee shall default in the performance of any other obligation hereunder and such default continues for 5 days after written notice thereof to Lessee by Lessor, or (e) Lessee becomes bankrupt or makes an assignment for the benefit of creditors, or (f) Lessee applies for, or consents to, the appointment of a receiver, trustee, conservator or liquidator of Lessee or of all or a substantial part of the assets of Lessee, or if such receiver, trustee, conservator or liquidator is appointed without the application or consent of Lessee, or (g) petition is filed by or against Lessee under the Bankruptcy Act or any amendment thereto (including, without limitation, a petition for reorganization, arrangement or extension) or under any other insolvency law or law providing for the relief of debtors, then, if and to the extent permitted by applicable law, Lessor shall have the right to exercise any one or more of the remedies as provided hereunder.

9. REMEDIES: In the event of default, Lessee may at its option, (a) declare the entire amount of the unpaid rental for the full balance of the term of the lease due and payable, without further notice, whereupon the same shall become immediately due and payable, (b) without demand or legal process and without being guilty of trespass or conversion and without thereby rendering the Lessor liable to refund any sums received as a deposit or as prepaid rent and without constituting a termination of the lease or relieving the Lessee of its original obligation, enter into the premises where the equipment may be found and take possession of same and remove same, whereupon all rights of Lessee in such equipment shall terminate absolutely, and (c) obtain all prior payments of rent and sell the same at public or private sale with or without notice to Lessee, and the equipment for a longer or shorter term than the original lease, the proceeds of such sale or relation, less the expenses of reaching, storing, repairing, reconditioning or reletting and attorney's fees as hereinafter defined, to be applied to the payment of the unpaid total rent for the balance of the term of this lease. Lessee shall remain liable for the balance of the unpaid rent. Lessee shall be liable for all expenses Lessor may incur in connection with the enforcement of any of its remedies hereunder, including without limitation, attorney's fees equal to 20% of the total unpaid balance or in any action to recover possession of Lessor's property, 20% of the value of said property.

All remedies of Lessor hereunder are cumulative and may, to the extent permitted by the law, be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed to be an election of such remedy or to preclude the exercise of any other remedy. No failure on the part of the Lessor to exercise, and no delay in exercising any right or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by Lessor of any right or remedy hereunder preclude any other or further exercise of any other right or remedy. Whenever any payment is not made when due hereunder, the Lessee promises to pay to the Lessor or its assigns, not later than one month thereafter, an amount calculated at the rate of 1% per annum for such delayed payment and to make such payments as liquidated damages occasioned by such delay.

10. RISK OF LOSS: Lessee hereby assumes the entire risk of loss, from any and every cause whatsoever, in event of loss, Lessee at its expense and at Lessor's option shall either (a) repair the equipment, returning it to its previous condition, or (b) replace same with like equipment acceptable to Lessor and in good condition and equivalent value, which shall become the property of the Lessor, or (c) pay Lessor all unpaid rents or such unpaid rents as may be allocated to specific items of equipment. Upon replacement or payment, this lease shall terminate with respect to replaced or paid for equipment and Lessee shall take title to same on an as-is where-is basis. In case Lessee shall fail to repair, replace or pay for same, Lessor may repair at Lessee's expense, to be charged as additional rental.

11. OTHER COVENANTS: Lessee agrees that its obligations under this lease are absolute, and shall continue in force and effect regardless of the disability of the Lessee to use the equipment because of any reason whatsoever, including but not limited to, war, act of God, government regulations, strike, loss or damage, obsolescence; breach of contract or non-performance of or delay in, delivery, misdelivery and that its obligations shall not abate due to any claim or set-off against Lessor. Lessee warrants that the application, statements and financial reports submitted by it to the Lessor are material and accurate to the granting of this lease and that any material misrepresentations shall constitute default hereunder. Lessee agrees that Lessor has made no warranties or representations, express or implied, including the warranty of merchantability, with regard to the equipment and that the equipment has been selected by the Lessee and is of a design, size, fitness and quality selected by the Lessee and that the Lessee is satisfied that the same is suitable and fit for its purpose. Lessee agrees to procure for Lessor such stopgap certificates, landlord's and/or mortgagee's waivers or any other documents as Lessor or its assigns may reasonably request to effectuate the purposes of this lease. Lessee agrees to furnish its certified annual financial statements or any other information delivered by it to its banks, stockholders or other creditors and such other financial statements as the Lessor may require. Lessee agrees not to sublet or otherwise assign or transfer its rights and obligations hereunder without the written consent of Lessor, which consent shall not be unreasonably withheld, provided however that any consent to such assignment or transfer shall not release the Lessee from any liability hereunder. Lessee warrants that this lease has been duly authorized, that no provision of this lease is inconsistent with Lessee's charter or by-laws or any other credit agreement or other instrument to which Lessee is a party or which by Lessor or its property may be bound or affected. Lessee agrees that the Lessor may examine Lessee's books and financial records on due notice. Lessee hereby waives a true copy of the right to interpose any counterclaim or offset of any nature or description in any litigation between the Lessor and Lessee with respect to this lease, the property covered hereunder and the repossession hereof.

12. ASSIGNMENT: This lease or any equipment or any rents or other sums to become due hereunder may be transferred by Lessor without notice and in such event, Lessor's transferee or assignee shall have all rights, powers, privileges and obligations of Lessor hereunder and Lessee's obligations hereunder shall not be subject to any defense, offset or counterclaim against Lessor. This lease is subject and subordinate to any mortgage which now or hereafter may be placed on the equipment, except that so long as the Lessee is not in default hereunder, the Lessee shall be entitled to peacefully hold, enjoy, possess and use such equipment during the term specified herein.

13. RETURN: At the expiration of this lease, Lessee shall at its expense deliver equipment to the Lessor in accordance with Lessor within the continental United States and in the same condition as received, less normal depreciation.

14. RETAINABLE DEPOSIT: The Lessor acknowledges receipt of the sum set forth above as a retainable deposit to secure the faithful performance by the Lessee of all obligations of the Lessee under the lease. The retainable deposit shall be held by the Lessor and if the Lessee is in default, Lessor may apply all or any part of said deposit to the payment of a sum of money or to the payment of liquidated damages.

15. ADDITIONAL SCHEDULES; AMENDMENTS: This lease and all additional leases shall be independent covenants and shall be governed by the same law; but any default on one lease shall be a default on all leases hereunder. As provided above, this lease contains the entire agreement between the parties, and may not be orally modified or discharged except in writing. When a new form used herein is inappropriate, the singular or plural shall be deemed substituted therefor.

16. ENTIRE AGREEMENT: Lessee shall keep the entire, if Lessee is not in default hereunder, upon signing of this lease, and at each rental as specified in the schedule, payable in advance at the beginning of each rental period. This lease and all additional leases shall be independent covenants and shall be governed by the same law; but any default on one lease shall be a default on all leases hereunder. As provided above, this lease contains the entire agreement between the parties, and may not be orally modified or discharged except in writing. When a new form used herein is inappropriate, the singular or plural shall be deemed substituted therefor.

NATIONAL EQUIPMENT RENTAL, LTD.
2000 TELEGRAPH PARK, NEW YORK 1002 (212) 343-1000

NATIONAL EQUIPMENT RENTAL, LTD. hereby leases to the undersigned Lessee, and Lessee hereby leases and rents from Lessor, the equipment described in the schedule listed below and additional lease schedules (hereinafter collectively called "Schedule") subject to the terms and conditions set forth below and continued on the reverse side hereof.

SCHEDULE

1. TERM: 66 months

2. RENTAL PAYMENTS: \$361.00 per month for the first 66 months,
\$ per month for the next months,
\$ per month for the next months,
\$ per month for the next months,
\$ per month for the next months.

ADVANCE RENTALS: \$722.00 payable at the time of signing of this schedule, to be applied to the 66th and 67th rental payments.

4. RENEWAL OPTION: \$ * 5. SECURITY DEPOSIT: \$ *

6. EQUIPMENT LOCATION: 4524 West 1st Street

7. LESSEE'S ADDRESS: Santa Ana, California

8. EQUIPMENT DESCRIPTION: 1 Burroughs L2301-608 Mini-Computer;
1 Burroughs A562 Tape Perforator; 1 Burroughs A581 Tape Reader

\$722.00 - 1st Annual Renewal payable in Advance
\$722.00 - 2nd Annual Renewal payable in Advance
\$361.00 - 3rd Annual Renewal payable in Advance

9. LIABILITY INSURANCE REQUIRED \$100,000- Personal Injury \$25,000. Property Damage

AGENT, AS COLLECTOR, OF ALL RENTALS DUE TO Lessor, AS REQUIRED BY THE LESSEE'S CREDIT AND RENTAL RECORDS.

1. TERMS AND RENTAL NOTICES: Subject to the conditions herein stated, this lease shall be for a period stated in the Schedule commencing with delivery to Lessee, its agent or a carrier, whichever shall be earlier. Lessee agrees to pay the total rent for the term, which shall be in the total amount of all rental payments stated in the Schedule, plus such additional rentals as are provided herein. All payments shall be made at the office of the Lessor specified below or at such other place as Lessor or Lessor's assignee may in writing designate, **MONTHLY IN ADVANCE.**

2. TITLE: Lessor shall at all times retain title to the equipment. All documents of title and evidences of delivery shall be delivered to the Lessor. Lessee will not change or remove any insignia or lettering which is on the equipment at the time of delivery or which is thereafter placed thereon indicating Lessor's ownership thereof, and at any time during the lease term, upon request of Lessor, will affix to the equipment, in a prominent place, labels, plates or other markings supplied by Lessor stating that the equipment is owned by Lessor. Lessor may at Lessee's expense cause this lease to be filed, recorded, refiled, rerecorded or financing statements (which may be signed by the Lessor only if permitted by statute) to be filed as permitted or required by law. Lessee at its expense shall protect and defend Lessor's title, at all times keeping the equipment free from any legal process and/or encumbrances whatsoever, including, but not limited to liens, attachments, levies and seizures, and shall give Lessor immediate written notice thereof and shall indemnify Lessor for any loss caused by the failure of the Lessee to take action as provided herein.

3. PURCHASE, DELIVERY AND PREPAYMENTS: Lessee requests Lessor to purchase the equipment from a vendor selected by Lessee and arrange for delivery, which shall be deemed complete upon arrival at Lessee's premises or when otherwise received by Lessee's agent. If Lessee requests Lessor to make any payments to vendor or supplier, or if Lessor makes any such payment prior to delivery and acceptance, and if Lessee for any reason does not accept the equipment, Lessee shall, on demand by Lessor, pay Lessor any amounts theretofore paid or owing by Lessor in respect to the purchase of such item of equipment and upon such payment, Lessee shall be subrogated to Lessor's claims, if any, against the manufacturer or other supplier thereof and Lessee shall become entitled to such item, as-is where-is, without warranty, express or implied, by the Lessor with respect to any matter whatsoever, and Lessee shall indemnify and save Lessor harmless from any and all liability to the supplier thereof.

4. CARE AND USE OF EQUIPMENT: Lessee, at its own cost and expense, shall maintain the equipment in good operating condition, repair, and appearance, and protect same from deterioration other than normal wear and tear; shall use the equipment in the regular course of its business only, within its normal capacity, without abuse, and in a manner contemplated by the manufacturer thereof; shall not make modifications, alterations or additions to the equipment (other than normal operating accessories or controls), without the written consent of Lessor, which shall not be unreasonably withheld; shall not so affix the equipment to realty so as to change its nature to real property, and agrees that the equipment shall remain personal property at all times regardless of how attached or installed; shall keep the equipment on the premises where delivered, and shall not remove the equipment without the written consent of Lessor, which shall not be unreasonably withheld. All modifications, repairs, alterations, additions, replacements, substitutions, operating accessories and controls shall accrue to the equipment and become the property of the Lessor. Lessor shall have the right, during normal hours, to enter upon the premises where the equipment is located in order to inspect, observe or remove same, or otherwise protect Lessor's interest, and Lessee shall cooperate in affording Lessor the opportunity to do same. For the purpose of assuring Lessor that Lessor's equipment will be properly serviced, Lessee agrees to cause the equipment to be maintained pursuant to the manufacturer's standard preventive maintenance contract and/or recommendations.

5. LEASE: Lessee intends the rental payments in this lease to be net to the Lessor. Lessee shall comply with all laws and shall pay all taxes, including but not limited to sales and use taxes, excise taxes, personal property taxes and any other taxes, registrations fees, freight and transportation charges and any similar charges imposed on the ownership, use or possession of the equipment during the term of this lease. Lessee shall pay to Lessor all costs and expenses including, but not limited to, as hereinafter defined, storage, caretaking and repossession expenses in connection with the enforcement of this lease. In case any charges, costs, taxes or expenses required to be paid by the Lessee under this lease are not paid after the due date thereof, Lessor shall have the right but shall not be obligated to pay the same and to charge the same with interest at the highest legal rate from the date of said payment, as additional rent, to be paid in full with the next rental payment. The rental set forth herein is based on the prime rate as of the date hereof, Lessee agrees that if there is an increase in the prime rate during the term hereof, the rental shall be increased in accordance therewith.

6. LIABILITY: Lessee shall and does hereby indemnify and save Lessor harmless from any and all liability arising out of the equipment, collection, possession, leasing, renting, operation, control, use, maintenance, delivery and/or return of the equipment, and all terms and conditions on the reverse side hereof are incorporated in and made a part of this lease.

Lessee agrees to all the terms and conditions set forth above and on the reverse side hereof, and in witness whereof, Lessee executes this lease. This lease shall be binding upon all parties, their successors, legal representatives and assigns.

LESSOR: NATIONAL EQUIPMENT RENTAL, LTD.
100772
BY: [Signature]
Agent and Representative
(IF CORPORATION AFFIX CORPORATE SEAL)

DATE: 8-18-72, 1972
BERNARD C. HITTIN & THOMAS GUILTIN, Individually & as THE GUILTIN COMPANY, Co-Partners (Limited)
Under the name of THE GUILTIN COMPANY
BY: [Signature]
THOMAS GUILTIN (TGD)
(IF CORPORATION AFFIX CORPORATE SEAL)



FIREMAN'S FUND INSURANCE COMPANY
THE AMERICAN INSURANCE COMPANY
NATIONAL SURETY CORPORATION
ASSOCIATED INDEMNITY CORPORATION
AMERICAN AUTO INSURANCE COMPANY

FILED

BOND NO. 2423008

JUN 7 3 57 PM '73

CLERK UNDERTAKING FOR REMOVAL
U.S. DISTRICT COURT
EAST DISTRICT
NEW YORK
8:25

KNOW ALL MEN BY THESE PRESENTS, That the NATIONAL SURETY CORPORATION, having an office and place of business in the City, County and State of New York, is held and firmly bound unto National Equipment Rental Ltd.

in the penal sum of Five Hundred Dollars lawful money of the United States of America, for the payment of which, well and truly to be made, it binds its successors and assigns, firmly by these presents.

The condition of this obligation is such that whereas Bernard Quintin and Thomas Quintin, Individually
and doing business as The Quintin Company, Co-Partners under the laws of the State California
and Dorothy K. Quintin

being about to petition the District Court
of the United States, for the Eastern District of New York, for the removal of a
certain cause pending in the Supreme Court of the State of New York County of Nassau
wherein the said National Equipment Rental Ltd.

plaintiff and
the said Bernard Quintin and Thomas Quintin, individually and Doing Business as The Quintin
Company, Co-Partners under the laws of the State of California, and Dorothy K. Quintin,

defendant, to the District Court of the United States, for the Eastern District of New York

NOW, THEREFORE, if the said Petitioner(s) shall pay all costs and disbursements that may be awarded by said District Court of the United States, if said District Court shall determine that such suit was not removable or was improperly removed, then this obligation shall be void, otherwise it shall remain in full force and virtue.

IN WITNESS WHEREOF, the said NATIONAL SURETY CORPORATION has caused its corporate seal to be hereto affixed, and these presents to be signed by its duly authorized officers on the 5th day of June, 19 73

NATIONAL SURETY CORPORATION

BY

Roberta Rosenfeld
Roberta Rosenfeld

Attorney in Fact

On the 5th day of June 1973

personally came, **Roberta Rosenfeld** at 8906 146th St, Jamaica, N.Y. to me known who, being by me duly sworn, that he is an Attorney-in-Fact of NATIONAL SURETY CORPORATION, the corporation described in and which executed the above instrument, that he knew the seal of said corporation, that the seal affixed to said instrument is such corporate seal, that it was so affixed by the Board of Directors of said corporation, and that he signed his name thereto by like order, and that the Superintendent of Insurance of the State of New York has, pursuant to Chapter 492 of the Laws of the State of New York for the year 1939 constituting Chapter 28 of the Consolidated Laws of the State of New York known as the Insurance Law, as amended, issued to the National Surety Corporation his certificate that said Corporation is qualified to become and be accepted as surety or guarantor on all bonds, undertakings, recognizances, guarantees and other obligations required or permitted by law, and that such certificate has not been revoked.

[Signature]
Notary Public

POWER OF ATTORNEY

KAREN McMULLIN
NOTARY PUBLIC, State of New York
No. 41-2634575
Qualified in Queens County
Certificate of the State of New York
Commission Expires March 30, 1975

STATE OF NEW YORK
COUNTY OF New York

Walter Pratz

Res.

Assistant Secretary of NATIONAL SURETY CORPORATION, do hereby certify that the following is a full, true and correct copy of Article VII and VIII of the By-Laws of the NATIONAL SURETY CORPORATION adopted on the 2nd day of October, 1970, and now in full force and effect, to wit:

Article VII. Execution of Instruments Pertaining to the Insurance Business of the Company.

Section 28. All policies, bonds, undertakings, certificates of insurance, cover notes, recognizances, contracts of indemnity, endorsements, stipulations, waivers, consents of sureties, re-insurance acceptances or agreements, surety and co-surety obligations and agreements, underwriting undertakings, and all other instruments pertaining to the insurance business of the Company, shall be validly executed when signed on behalf of the Company by the Chairman of the Board of Directors, the President, any Vice President, any other officer, employee, agent or attorney-in-fact authorized to so sign by the Board of Directors, the Chairman of the Board of Directors, (iii) the President, (iv) any Vice President, or (v) any other person empowered by the Board of Directors, the Chairman of the Board of Directors, the President, or any Vice President to give such an authorization, provided that all policies of insurance shall also bear the signature of the Secretary, which may be a facsimile, and unless manually signed by the Chairman of the Board of Directors, the President, or a Vice President, a facsimile signature of the Chairman of the Board of Directors or the President. A facsimile signature of a former officer shall be of the same validity as that of an existing officer.

The affixing of the Corporate seal shall not be necessary to the valid execution of any instrument but any person authorized to execute such instrument may affix the Company's seal thereto.

Article VIII. Appointment and Authority of Resident Assistant Secretaries, and Attorneys-in-Fact, and Agents to Accept Legal Process and Make Appearances.

Section 29. Appointment. The Chairman of the Board of Directors, the President, any Vice President, or any other person authorized by the Board of Directors, the Chairman of the Board of Directors, the President or any Vice President, may, from time to time, appoint Resident Assistant Secretaries and Attorneys-in-Fact to represent and act for and on behalf of the Company and Agents to accept legal process and make appearances for and on behalf of the Company.

Section 30. Authority. The authority of such Resident Assistant Secretaries, Attorneys-in-Fact, and Agents shall be as prescribed in the instrument evidencing their appointment, and any such appointment and all authority granted thereby may be revoked at any time by the Board of Directors or by any person empowered to make such appointment.

I do further certify that pursuant to said By-laws, Thomas T. Carmack, Lawrence Carr, Harold J. Carr, Walter M. Carr, Barbara DeGray, Stella Dull, Robert Di Scala, George H. Faha, William W. Finkle, Anthony Garbarini, Denise Gennaro, Kenneth R. Heitman, C. A. Humenik, Robert M. Kumpfmack, Charles W. Levine, James D. McAdoo, Karen McMullin, Zeldia Maltz, Robert K. O'Brien, Charles F. Perkins, Joan M. Platter, Walter Pratz, Roberta Rosenfeld, Lawrence H. Savoy, Noel Shinker, Christine A. Szal, Robert J. Varro, Joseph A. Valone, Wayne W. Watson, Robert J. Wheaton and Floyd H. White, were each duly appointed Attorney-in-Fact of NATIONAL SURETY CORPORATION on the 1st day of January, 1973, with full power and authority to execute, acknowledge and deliver any and all bonds, undertakings, contracts, agreements of indemnity and other conditional or obligatory undertakings, without limitation as to the amount. Said power of attorney is in full force and effect and has not been revoked.

I do further certify that the Superintendent of Insurance of the State of New York has issued to the NATIONAL SURETY CORPORATION his certificate that said Company is qualified to become and be accepted as surety or guarantor on all bonds, undertakings and other obligations or guarantees, as provided in the Insurance Law of the State of New York and all laws amendatory thereof and supplementary thereto, and that such certificate has not been revoked.

Subscribed and sworn to before me this

5th day of June 1973

[Signature]
Notary Public

Res.

Assistant Secretary

KAREN McMULLIN
NOTARY PUBLIC, State of New York
No. 41-2634575
Qualified in Queens County
Certificate of the State of New York
Commission Expires March 30, 1975

REV-1-73

DISTRICT COURT OF THE
UNITED STATES

District of New York

Plaintiff

AGAINST

Defendant

UNDERTAKING FOR REMOVAL

SURETY

NATIONAL SURETY CORPORATION

Attorney for Plaintiff

I approve of the within Bond, and of the
solvency of the surety.

59

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ JUN 13 1973 ★

TIME A.M. _____
P.M. _____

----- x
NATIONAL EQUIPMENT RENTAL, LTD., :

Plaintiff, :

-against- :

BERNARD QUINTIN and THOMAS QUINTIN, :
individually and d/b/a THE QUINTIN :
COMPANY, co-partners under the laws :
of the State of California and :
DOROTHY K. QUINTIN, :

Defendants. :

NOTICE

73-C-825
Judge Bartels

----- x
S I R :

PLEASE TAKE NOTICE that the defendants in the above-
entitled action have, on June 7, 1973, filed their petition
and bond for removal, copies of which are attached hereto
in the Office of the Clerk of the United States District
Court for the Eastern District of New York.

Dated: New York, New York
June 11, 1973

GOLENBOCK AND BARELL
Attorneys for Defendants
60 East 42nd Street
New York, New York 10017
(212)986-3300

TO: GERALD L. JACOBS, ESQ.
Attorney for Plaintiff
410 Lakeville Road
Lake Success, New York 11040

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.

60
being duly sworn, deposes and says: I am not a party to the action, am over eighteen years of age and am employed by Golenbock and Barell.

HERMAN KAPLAN, under penalty of perjury, states: I am an attorney at law admitted to practice in the State of New York and am associated with Golenbock and Barell,

attorneys of record for Defendants

herein.

On June 11, 1973

, I served the within

Notice and Petition for Removal
upon Gerald L. Jacobs, Esq.

attorney(s) for Plaintiff

410 Lakeville Road, Lake Success, New York 11040 in this action, at
and upon

the address(es) designated by said attorney(s) for that purpose,
by depositing (a) true copy(ies) of same enclosed in (a) postpaid properly addressed wrapper(s)
in a ~~postoffice~~ (an official depository) under the exclusive care and custody of the United
States post office department within the State of New York.

Dated: June 11, 1973

Herman Kaplan
(Attorney-At-Law) (R000000)

Sworn to before me, this
11th day of June, 1973.

4443 Aug 07
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

61
FILED
U. S. DISTRICT COURT E.D. N.Y.

★ JUL 11 1973 ★

NATIONAL EQUIPMENT RENTAL, LTD.,

Plaintiff,

TIME A.M. 10:14
P.M.

-against-

NOTICE OF MOTION

BERNARD QUINTIN and THOMAS QUINTIN,
individually and d/b/a THE QUINTIN
COMPANY, co-partners under the laws
of the State of California and
DOROTHY K. QUINTIN,

73 Civ. 825

Judge Bartels

Defendants.

S I R S:

PLEASE TAKE NOTICE, that upon the annexed affidavit of Leonard W. Wagman, Esq., sworn to July 5, 1973, the exhibits annexed thereto and the accompanying memorandum of law, defendants will move this Court before the Honorable John R. Bartels at the United States Courthouse, Cadman Plaza, Brooklyn, New York, on Friday, August 3, 1973 at 9:30 A.M., or as soon thereafter as counsel may be heard, for an order (1) pursuant to 28 U.S.C. §1404(a), transferring this action to the United States District Court for the Central District of California, (2) pursuant to Rule 6(b) Fed. R. Civ. P., extending defendant's time to answer or move with respect to the complaint until thirty (30) days following the entry of an order upon the instant motion, and (3) for such other and further relief as to this Court may seem just and proper.

Dated: New York, New York
July 5, 1973

Yours, etc.

GOLENBOCK AND BARELL
Attorneys for Defendants
60 East 42nd Street
New York, N.Y. 10017

By: [Signature]
A Member of the Firm

TO: GERALD S. JACOBS, Esq.
410 Lakeville Road
Lake Success, N.Y. 11040

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
NATIONAL EQUIPMENT RENTAL, LTD., :

Plaintiff, :

-against- :

73 Civ. 825

BERNARD QUINTIN and THOMAS QUINTIN, :
individually and d/b/a THE QUINTIN :
COMPANY, co-partners under the laws :
of the State of California and :
DOROTHY K. QUINTIN, :

AFFIDAVIT IN SUPPORT
OF MOTION TO TRANSFER

Defendants. :
-----X

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

LEONARD W. WAGMAN, being duly sworn, deposes and
says:

1. I am a member of the firm of Golenbock and
Barell and am fully familiar with the facts and circum-
stances relating to the instant action.

2. This affidavit is submitted in support of
defendants' motion for an order, pursuant to 28 USC §1404(a),
transferring this action to the United States District Court
for the Central District of California, and pursuant to
Rule 6(b) Fed. R. Civ. P. enlarging defendants time to
answer or move until thirty (30) days following the decision
of this motion.

61B

PARTIES

3. Plaintiff, National Equipment Rental, Ltd., is, upon information and belief, a Delaware Corporation, having its principal place of business in Nassau County in the State of New York.

4. Defendants Bernard Quintin and Thomas Quintin, doing business as the Quintin Company, a copartnership under the Laws of the State of California, and Dorothy K. Quintin are all residents of Orange County, California. None of the defendants has a residence or office for the transaction of business in the State of New York; the defendants have not transacted business in the State of New York.

THE ACTION

5. This action, based upon defendants' alleged default under an equipment leasing agreement, was commenced by the service of a Summons and Complaint by certified mail, return receipt requested, postmarked May 3rd, 1973 and received on or about May 8, 1973 in Orange County, California (a copy of said Summons and Complaint is annexed as Exhibit A).

6. On June 7, 1973, this action was removed by petition of defendants to the United States District Court for the Eastern District of New York under the provisions of 28 U.S.C. §1441, on the ground that the controversy exceeded the sum of \$10,000, exclusive of interest and costs, and is between citizens of different states (a copy of the petition for removal is annexed as Exhibit B).

61C

7. A stipulation entered into by counsel for the parties, extending defendants time to answer or move with respect to the summons and complaint until and including July 5, 1973 was so ordered by the court on June 22, 1973. (A copy of the stipulation is annexed as Exhibit C).

THE FACTS

8. The action is based upon an alleged default in payment by the Quintin Company under an equipment leasing contract. The subject matter of the leasing agreement is equipment manufactured by the Burroughs Corporation (hereinafter "Burroughs"), identified by the manufacturer's model number as follows: (i) 1 Burroughs L2301-608 Mini Computer; (ii) 1 Burroughs A562 Tape Perforator; and (iii) 1 Burroughs A581 Tape Reader.

9. From the papers forwarded to us from California by Quintin's California counsel and from telephone conversations with said counsel, it appears that the aforesaid equipment initially was obtained by The Quintin Company, pursuant to a contract of sale it had entered into in the State of California with the manufacturer, the Burroughs Corporation. All negotiations for said contract between Burroughs and Quintin were carried on in California.

10. The equipment had been obtained by The Quintin Company for the purpose of reducing the cost of operating the bookkeeping and accounting service they provide for local California gasoline station operators, and to enable them to provide a faster and more efficient service to their clients.

11. At the time of the execution of the aforementioned sales contract with Burroughs it was understood and agreed by the parties thereto, that it would be economically advantageous to Quintin to enter into a superseding lease agreement with a local California equipment leasing company.

12. In accordance with the aforesaid understanding, and through the efforts of Burroughs, The Quintin Company was contacted with respect to negotiating such leasing contract, by National Equipment Rental, Ltd. of California (hereinafter "National of California"), a local California equipment leasing company.

13. At all times commencing with that initial contact and continuing until the time of Quintin's alleged default under the leasing contract which was subsequently executed, Quintin believed that it was dealing with a single corporation, the local California corporation as aforesaid.

14. Quintin executed the Lease on or about August 18, 1972, and returned it for acceptance to the California address indicated on the covering letter which accompanied the Lease. The Wilshire Boulevard, Los Angeles County, California address to which the lease was returned apparently housed the offices of both National of California as well as National Equipment Rental, Ltd. (hereinafter "National of Delaware").

15. National of California, with whom Quintin had been dealing, forwarded to Quintin a National of Delaware

GLE

lease form. Strangely, the August 2nd covering letter from National to Quintin which forwarded the lease for signing did not specify which National Company was sending the lease (Exhibit D annexed). Stranger still is the August 10th invoice (Exhibit E hereto) for advance rent sent by National Equipment Rental Ltd. of California.

16. The Lease was not accepted until some time at or about December 7, 1972.

17. During the intervening period, August 18th to December 7th, the equipment proved unsound, unsuitable and wholly defective, and that fact was communicated on numerous occasions by Quintin to the California office of National Equipment and to Burroughs. Moreover, during that period Quintin refused repeated requests from the California office of National to provide further information with respect to Quintin's financial and credit standing.

18. Notwithstanding Quintin's communication of the aforesaid complaint and its refusal to furnish the requested credit information, at some time in December 1972 Quintin was notified by National of Delaware that it had accepted the Lease, and an invoice for payment was sent to Quintin.

19. Quintin continued to voice its rejection of the equipment to the California office of National, and demanded that the equipment be removed from Quintin's premises. The equipment was removed on or about May 16, 1973.

20. The equipment which constitutes the subject matter of the lease is no longer in the possession of Quintin and is, upon information and belief, located in the State

of California and in the possession of National Equipment Rental, Ltd.

TRANSFER

21. As will hereinafter be demonstrated, there are compelling reasons mandating the transfer of the instant action to the Central District of California for the convenience of the parties and witnesses, and in the interest of justice.

The Parties

22. Each and every defendant herein resides in Orange County California, and no defendant has a residence or an office for the transaction of business in the State of New York.

23. Plaintiff obviously transacted all its business in California, preparatory to its acceptance of the lease.

24. The Quintin Company is a small family business operated by Bernard and Thomas Quintin, father and son, respectively, and is wholly dependent for its operation upon the presence of its two partners. It employs only one other person who functions as both secretary and bookkeeper. The absence of the defendants from the business occasioned by participation in the trial of this action in New York would seriously disrupt and result in a temporary shut down of Quintin's normal operations.

25. The presence of each defendant at a trial in New York would entail the time and cost to travel in excess

61

of 3,000 miles, in each direction, as well as the expense of maintaining themselves in the City of New York for the duration of the trial, an expense wholly disproportionate to the issues involved. Additionally, plaintiffs witnesses and evidence are in the main already in California.

26. National Equipment Rental, Ltd., a Delaware Corporation, has an office for the transaction or doing of business in the County of Los Angeles in California, and during the negotiation of the Lease, conducted all of its activities and issued all of its communications to Quintin therefrom, or from the offices of its wholly owned subsidiary, National of California. No inconvenience would accrue to plaintiff by litigating in California.

Witnesses

27. At this stage of the proceedings, prior to joinder of issue and discovery, defendants have not had the opportunity to delineate the principal issues, the lines of proof and defense or the names of prospective witnesses in this action. However, since every act with respect to the Lease, with the single exception of National's acceptance in New York, occurred in the State of California, any witnesses defendants may desire to produce will necessarily be from the State of California and not subject to the compulsory process of the New York court. Moreover, the expense of transporting a willing witness to the New York forum would be prohibitive.

Interest of Justice

28. The Lease at bar is in substance*, a California

* Despite its technical status as a New York transaction, acquired solely by reason of its acceptance in New York.

61#

transaction:

(i) the Lease merely supplants the prior sales contract (entirely a California transaction) between Burroughs and Quintin, executed and performable in California, and pursuant to which possession of the equipment was initially obtained.

(ii) the equipment which constitutes the subject of the action and the subject matter of the Lease is, and at all times relevant hereto has been located in California.

(iii) all negotiations with respect to the Lease, including Quintin's execution of its part of the Lease, occurred in California, and all correspondence from National, prior to Quintin's alleged default, was issued out of the California office.

29. Defendants should not be forced to endure the hardship of engaging in litigation in a distant and inconvenient forum merely by reason of their failure to notice that the corporation designated in the Lease is one other than the corporation with whom all preliminary negotiations had been conducted; that failure is due, in large measure, to the subtle policy of concealment and deceit pursued by the two National corporations in effecting the execution of the Lease.

(a) It appears from the correspondence thus far available to us that National Equipment Rental, Ltd. of California engaged in a subtle policy of concealment of the fact of its status as agent which led to defendants to believe

61

that they were negotiating with National of California as principal.

(b) A review of the stationery utilized during the negotiations and a comparison of that stationery with that utilized subsequent to Quintin's alleged default, illustrates the subtlety of the deceit practiced. During the preliminary negotiations, two types of stationery were used by the equipment leasing company: (i) one bearing the heading "National Equipment Rental, Ltd. of California, 1545 Wilshire Boulevard, Suite 711, Løs Angeles, California", and (ii) the other bearing a heading consisting of merely the words "National Equipment Rental, Ltd.", at the base of which appears the address 1541 Wilshire Boulevard, Suite 110, Los Angeles, California.

(c) Commencing with Quintin's alleged default under the lease, a third type of stationery appeared, which for the first time prominently bears a New York address "P.O. Box 473, N. New Hyde Park, New York 11040".

(d) The wholly unexecuted lease contract, forwarded to Quintin only after extended negotiations with respect to the terms thereof, was sent from the California office of one of the two National corporations, both of which have offices in the same building on Wilshire Boulevard. It was returned by Quintin to the California office for acceptance.

(e) A review of the format of the lease agreement explains Quintin's failure to notice and to consciously assent to the terms of paragraph 16 by operation of which the Lease becomes technically a New York contract. The leasing

agreement is a one page document containing terms and conditions on the forward as well as the reverse side. The place designated thereon for the affixation of signatures and the place where such signatures indeed appear is upon, the forward side. The final paragraph of the lease which appears at the base of the reverse side of the document is labelled in block letters "EXECUTION; LAWS GOVERNING; SERVICE". Thereafter, in print one-half the size of the caption, there appears a purported consent to the jurisdiction of the courts of the State of New York and a purported ouster from jurisdiction of the courts of the State of California (par. 16).

(f) National's deliberate, albeit successful design to deflect attention from this highly significant provision, accomplished by the concealment practised in the preliminary negotiations as well as in the lease itself, should not be approved by this court. Moreover, this provision which purports to deprive the California courts of jurisdiction over this transaction is wholly unreasonable.

30. Further injustice will result if defendants are forced to litigate in New York.

Paragraph 10 of the Lease contains a covenant by Lessee that its obligations under the Lease are

"absolute and shall continue in force and effect regardless of the disability of the lessee to use the equipment because of any reason whatsoever, including but not limited to...breach of contract or warranty".

This provision if enforced, operates to deprive Lessee of the right to assert as a defense to the claim of

G1K

National the wholly defective and unsuitable condition of the equipment. Impleader of the manufacturer, the Burroughs Corporation, is essential to the availability of relief to the defendants. However, the proof required to sustain a claim against Burroughs, the equipment, is located in California whether it is in the possession of one of the two National corporations or has been returned to Burroughs. Moreover, the question of the suitability of the equipment will depend for support upon evidence of the nature of defendants' business, all of which is located in California.

31. The provisions of paragraph 8 of the Lease further complicate the issues if litigated in New York. The portion of Paragraph 8 of the Lease which is captioned "REMEDIES" provides that upon Lessor's taking possession of the equipment, Lessor may

"(c) retain all prior payments of rent and sell the same at a public or private sale with or without notice to the Lessee, with or without having the equipment at the sale, at which sale Lessor may purchase all or any part of the equipment or relet the equipment for a longer or shorter term of the original Lease, the proceeds of such sale or reletting...to be applied to the payment of the unpaid total rent for the balance of the term of this lease".

National's sale or re-lease of the equipment now in its possession is likely to occur during the pendency of this action and at the place of the location of the equipment, the State of California; any defense defendants may raise with respect to the manner in which National has disposed of the equipment will necessarily depend upon evidence localized in California.

GIL

32. Defendants expect to interpose inter alia the following defenses: (i) that their offer to Lease was revoked prior to the acceptance thereof by National; (ii) that their offer to lease lapsed upon the expiration of a reasonable time for acceptance; (iii) that the equipment for which plaintiff seeks damages was rejected.

Each of these defenses requires evidence which can be adduced only in the State of California and necessitates inquiry into the relationship between National of California and National of Delaware, and with the manufacturer in California, Burroughs, as well as inspection of certain of the records of the California office of National of Delaware and the California office of National of California.

33. From the foregoing, it is apparent that defendants will have to sustain unnecessary hardship, burden and needless expense if this action continues in New York. Moreover, the consequent inability of defendants to properly defend this action in New York should impel the court, in the interest of justice, to transfer the action to California. It is respectfully requested that the instant action be transferred to the Central District of California.

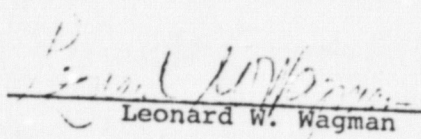
EXTENSION OF TIME

Defendants also seek an enlargement of time to respond to the complaint pending a decision by this Court of the transfer motion. Should defendants' motion be granted, the defense and trial preparation of this action would be conducted by California counsel. On the other hand, should the instant motion be denied, attorneys from this firm would have

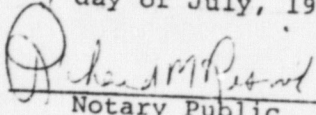
GM

to obtain much information from California, perhaps travel there to interview defendants and others, locate necessary witnesses, inspect and examine the equipment, inspect numerous records and books and do all work necessary to answer or move with respect to plaintiff's complaint. Until the transfer motion is decided, defendants will not know whether representation of California counsel will be required.

Defendants have made the instant motion prior to expiration of their time to answer or move. Under these circumstances, this Court may in its discretion, grant the requested extension. Rule 6(b), Fed. R. Civ. P.


Leonard W. Wagman

Sworn to before me this
17 day of July, 1973.


Notary Public

JOSEPH M. FREED
Notary Public, State of New York
No. 447678
County of New York
Commission Expires March 30, 1976

FILED

U.S. DISTRICT COURT S.D.N.Y.

★ JUL 11 1973 ★

TIME A.M. _____

P.M. _____

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
NATIONAL EQUIPMENT RENTAL, LTD., :
Plaintiff, :
-against- :
BERNARD QUINTIN and THOMAS QUINTIN, :
individually and d/b/a THE QUINTIN :
COMPANY, co-partners under the laws :
of the State of California, and :
DOROTHY K. QUINTIN, :
Defendants. :

73 Civ. 825
Judge Bartels

MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS' MOTION TO TRANSFER
PURSUANT TO 28 U.S.C. §1404(a)
AND TO EXTEND DEFENDANTS' TIME
TO ANSWER OR MOVE PURSUANT TO
6(b) FED. R. CIV. P.

GOLENBOCK AND BARELL
60 EAST 42ND STREET
NEW YORK, N. Y. 10017

5

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
NATIONAL EQUIPMENT RENTAL, LTD., :
Plaintiff, :
-against- :
BERNARD QUINTIN and THOMAS QUINTIN, :
individually and d/b/a THE QUINTIN :
COMPANY, co-partners under the laws :
of the State of California, and :
DOROTHY K. QUINTIN, :
Defendants. :
-----X

73 Civ. 825
Judge Bartels

MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS' MOTION TO TRANSFER
PURSUANT TO 28 U.S.C. §1404 (a)
AND TO EXTEND DEFENDANTS' TIME
TO ANSWER OR MOVE PURSUANT TO
6(b) FED. R. CIV. P.

Preliminary Statement

This memorandum is submitted in support of defendants' motion for an order transferring this action from the United States District Court for the Eastern District of New York to the Central District of California and extending defendants' time to answer or move until thirty (30) days after decision is entered on the instant motion to transfer.

64

Defendants' motion to transfer is for the convenience of the parties and witnesses and in the interest of justice.

Statement of Facts

The relevant facts are set forth in the accompanying affidavit of Leonard W. Wagman, a member of the firm of Golenbock and Barell, attorneys for defendants, and they are expressly incorporated by reference herein.

In brief the accompanying affidavit demonstrates that the factors considered by the federal courts in ruling on a 1404 motion to transfer are herein present and support the conclusion that the Central District of California is the appropriate forum to hear and determine this dispute.

Among others, the following facts are significant:

(1) All defendants are residents of Orange County, California and conduct their business there. No defendant is found in the Eastern District of New York or maintains a residence, office or employees here (Wagman, aff. par. 4).

(2) The operative occurrences regarding the making of the contract, including all preliminary negotiations and performance thereof, and excluding only the technical act

of plaintiff's signing the contract in New York, occurred in California, where plaintiff carried out virtually all its activities. (Wagman aff., par. 8-15).

(3) The Lease merely supplants a sales contract previously negotiated and executed in California by defendants with the Burroughs Corp., manufacturer of the equipment in question; both that contract and the lease were to be performed entirely in California.

(4) There can be little doubt that the normal operation of defendants business will be seriously disrupted by the absence of the co-partners during a trial in New York.

(5) The cost and distance of travel to New York by defendants and of maintaining themselves herein during the trial is wholly disproportionate to the nature of the lawsuit and the issues involved.

(6) All prospective witnesses are located in California.

(7) The equipment which constitutes the subject matter of the Lease and the proof to support defendants' prospective cross-claim against the manufacturer is located in California (Wagman aff., par. 20).

h #
ou

POINT I

THE INTEREST OF JUSTICE AND THE
CONVENIENCE OF PARTIES AND WITNESSES
MANDATE A TRANSFER OF THIS ACTION
TO THE CENTRAL DISTRICT OF CALIFORNIA

Section 1404(a) of the United States Code provides:

"(a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

The United States Supreme court enunciated the philosophy and purposes of 28 U.S.C. §1404(a) in Van Dusen v. Barrack, 376 U.S. 612, 616 (1964), as follows:

"Section 1404(a) reflects an increased desire to have federal civil suits tried in the federal system at the place called for in the particular case by considerations of convenience and justice. Thus, as the Court recognized in Continental Grain Co. v. Barge, 364 U.S. 19, 26, 27, the purpose of the section is to prevent the waste 'of time, energy and money' and 'to protect litigants, witnesses and the public against unnecessary inconvenience and expense...' To this end it empowers a district court to transfer 'any civil action' to another district court if the transfer is warranted by the convenience of parties and witnesses and promotes the interest of justice."

In determining whether a Section 1404(a) transfer is warranted, the location of parties and witnesses, the

relative ease of access to sources of proof, availability of compulsory process for the attendance of unwilling witnesses, the cost of obtaining witnesses, and other practical problems that would make the trial of a case easy, expeditious and inexpensive are the principal considerations. See, e.g., United States v. General Motors Corp., 183 F. Supp. 858, 861, (S.D.N.Y. 1960) (Herlands, D.J.); Coffill v. Atlantic Coast Line Railroad Company, 180 F. Supp. 105, (E.D.N.Y. 1960) (Bartels, D.J.).*

In addition, where the primary focus of the litigation will be upon conduct which occurred in or near the transferee district, or the cause of action or defense is predicated upon facts which transpired in the transferee district or the subject property is in the transferee district, convenience of parties and witnesses and the interest of justice will best be served by transfer. See, e.g., Silverman v. Wellington Management Company, 298 F. Supp. 877 (S.D.N.Y. 1969); Spencer White & Prentis Inc. v. Jacet Construction Corp., 258 F. Supp. 473 (S.D.N.Y. 1966) (MacMahon, D.J.); Cf. National Equipment Corporation v. McPhail Candy Corporation, 97 N.Y.S.2d 687 (N.Y. Co., 1950) [Change of Venue].

Each of the essential elements is present in the case at bar. The affidavit submitted in support of this motion

* Transfer denied because of the proximity of the case to trial.

conclusively demonstrates that all of the defendants, the prospective witnesses, as well as the relevant files and records are located in the Central District of California.

It is incumbent upon the Court, on a motion to transfer, to weigh the convenience of trial in the district in which the action is brought as against trial in the other district to determine in which place the trial can better be conducted without oppression to either party. Peyser v. General Motors Corporation, 158 F. Supp. 526 (S.D.N.Y. 1958). The only district in which the trial of the instant action can be conducted without oppression to either party is clearly the Central District of California.

A balancing of the relevant factors clearly favors a transfer of this action to the Central District of California. The choice of the New York forum oppresses and inconveniences defendants to such an extent as to effectively deter them from properly defending this action.* Simply stated, to try this action in New York would cause defendants a drastic financial and business hardship. Under less compelling circumstances, the courts have not hesitated to order a Section 1404 transfer. See, e.g., United States v. General

* Indeed, such intimidation appears to be National's very purpose in dealing with lessees in the fashion set forth in the moving affidavit.

Motors Corporation, 183 F. Supp. 858 (S.D.N.Y. 1960);
Ackert v. Ausman, 198 F. Supp. 538 (S.D.N.Y. 1961) man.
den. 299 F.2d 65 (2d Cir. 1962); United States v. American
Linen Supply Company, 134 F. Supp. 21 (E.D. Wis. 1955).

POINT II

PROVISION OF THE LEASE AGREEMENT THAT LITIGATION PERTAINING TO LEASE COULD BE BROUGHT ONLY IN THE COURTS OF NEW YORK CANNOT OPERATE TO DEPRIVE THIS COURT OF THE POWER TO CHANGE VENUE IN THE INTEREST OF JUSTICE.

As noted in the affidavit submitted in support of defendants motion (Wagman affidavit, par. 29), the lease contains an inconspicuous paragraph* purporting to deprive the New York courts of their power to transfer this action and to oust the California courts of jurisdiction over this dispute.

It is clear that any suggestion by plaintiff that the inclusion of this paragraph in the lease operates to deprive this Court of its statutory power to transfer this action in the interest of justice is not only presumptuous, but is also lacking in support.

The same provision was before this Court in National Equipment Rental, Ltd. v. Sanders, 271 F. Supp. 756 (E.D.N.Y. 1967) (Dooling, D.J.) wherein the court

*Paragraph 16 of the lease provides, inter alia, that "...all actions or proceedings arising directly or indirectly from this lease shall be litigated only in courts having situs within the State of New York..."

71

stated, at 762:

"it [the court] may not treat the parties agreement on venue as depriving it of the power to change venue if the interests of justice require a transfer".

The opinion rendered by the court in the above-mentioned action provides an illuminating analysis of the effect of such a provision. The provision was accorded, in the language of the court "some weight" [id at 761]. It did not provide the basis for the court's denial of defendants' motion to transfer the action. Contrariwise, the Court granted defendants leave to renew their motion to transfer:

"if the development of the case indicates that the interests of justice require reconsideration of the propriety of transfer." id. at 759.

The defendants in that action, unlike the defendants in the instant action, presented no facts to indicate that the choice-of-court agreement between the parties would operate "oppressively or unreasonably" [id at 761].

Highly indicative of the attitude of the Court, in the above cited action, to the use of such a provision, is its negative description of the provision as "not per se invalid." [id at 761].

As has been heretofore demonstrated, the underlying transaction and all acts relevant thereto occurred in the Central District of California; the transaction had virtually no contact with New York. The hardships and inequities to which defendants will be subjected by continued prosecution of this action in New York are so overwhelming as to mandate transfer of the action to the Central District of California. Even affording paragraph 16 of the lease "some weight", the applicable decisions call for transfer.

POINT III

THIS ACTION COULD HAVE BEEN INITIALLY
BROUGHT IN THE CENTRAL DISTRICT OF
CALIFORNIA

Section 1404(a) requires that a transferee district be one where the action might originally have been brought. It is clear from the facts set forth in the moving affidavit and from the complaint that this action could indeed have been commenced in the Central District of California. Defendants all reside in Orange County, in the Central District of California and conduct their business there. Plaintiff is a Delaware Corporation and claims to have its principal place of business in New York.*

* On this point, of interest is Josephson v. McGuire, 121 F. Supp. 83 (D. Mass 1954) a class action, where the Court noted that while plaintiff's choice of forum is entitled to a measure of deference this factor should receive minimum weight "where none of the conduct complained of occurred in the forum selected by plaintiff..." and plaintiff represents widely scattered plaintiffs. At bar, plaintiffs California agent who dealt with defendants is present in the transferee forum where the action could have initially been brought. Plaintiffs cannot be seriously inconvenienced by having to litigate in California.

POINT IV

DEFENDANTS' TIME TO ANSWER OR MOVE
SHOULD BE EXTENDED UNTIL THIRTY (30)
DAYS AFTER DECISION OF THE INSTANT
TRANSFER MOTION

Rule 6(b), Fed. R. Civ. P. in pertinent part,
provides:

"Enlargement. When by these rules...or by order of this court an act is required or allowed to be done within a specified time, the court for cause shown may at any time in its discretion (i) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by previous order..."

This action was commenced by the service of a summons and complaint by certified mail return receipt requested postmarked May 3, 1973 and received on or about May 8, 1973 in Orange County, California. A stipulation entered into by counsel for the parties, extending defendants' time to answer or to move with respect to the summons and complaint until and including July 5, 1973 was so ordered by this court on June 22, 1973. Accordingly, defendants' time to answer or move has not yet expired. An extension of time to answer or move pending decision of the transfer motion is appropriate. If the action is transferred, its defense would be conducted by California counsel. On the other hand, if the instant

75
motion were denied, attorneys from New York would have to travel to California to interview necessary defendants, locate witnesses, inspect the equipment, books and records, and do all work necessary to respond to plaintiff's complaint.

In either instance, it is necessary in the interest of justice that defendant's time to answer or move be extended until thirty (30) days following decision of the instant motion to transfer.

CONCLUSION

The exercise of the power to transfer an action pursuant to 28 U.S.C. 1404(a) rests within the sound discretion of the Court. It is respectfully submitted that all of the relevant factors at bar warrant transfer, and this court should direct the transfer of this action to the District Court for the Central District of California.

Dated: New York, New York
July 5, 1973.

Respectfully submitted,

GOLENBOCK AND BARELL
Attorneys for Defendant
60 East 42nd Street
New York, N.Y. 10017

Leonard W. Wagman
Andrea Hyde
Of Counsel

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ AUG 14 1973 ★

TIME A.M. _____
P.M. _____

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

NATIONAL EQUIPMENT RENTAL, LTD.,
Plaintiff,

-against-

73 Civ. 825
Judge Bartels

BERNARD QUINTIN and THOMAS QUINTIN,
individually and d/b/a THE QUINTIN
COMPANY co-partners under the laws
of the State of California, and
DOROTHY K. QUINTIN,

Defendants.

-----X

MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF'S AFFIDAVIT IN OPPOSITION
TO THE DEFENDANTS' MOTION FOR AN
ORDER SEEKING TO TRANSFER THIS
ACTION TO THE U.S. DISTRICT COURT
IN THE CENTRAL DISTRICT OF CALIFORNIA

STATEMENT OF FACTS

Pursuant to a written lease agreement executed on August 18,
1972, by the defendants, Bernard Quintin and Thomas Quintin,
individually and d/b/a The Quintin Company, co-partners under
the laws of the State of California ("Quintin"), National
Equipment Rental, Ltd. ("National") agreed to lease a Burroughs
computer for a term of sixty-six (66) months. Said computer was

received and accepted in good condition by Quintin on 8/18/72, as per plaintiff Exhibit A in its answering affidavit.

The lease agreement provided that lessor (National) shall not be responsible for any damage caused by error in programming or instructions to the lease equipment, latent defect, wear and tear or loss of the service or use of the lease equipment.

Prior to National entering into the picture, Quintin and Burroughs Corporation (vendor) had been negotiating and transacting all business with respect to the computer. Quintin, who needed financing for this purchase, then entered into negotiations with National for the financing. Subsequently, Quintin selected the equipment and requested National to purchase and lease the same to Quintin. After delivery and acceptance of equipment and pursuant to Quintin's instructions, National paid Burroughs.

An integral part of the consideration of National paying for the equipment and entering into a leasing agreement with Quintin was the defendants' express consent to paragraph sixteen (16) of the lease providing for jurisdiction and venue. It states:

"16. EXECUTION; LAWS GOVERNING; SERVICE: This lease shall only be binding when accepted by the Lessor at its Elmont, N.Y. office and shall be deemed to have been made in Nassau County, New York and shall be governed by the laws of the State of New York except for local recording statutes. As part of the consideration for the Lessor's executing this lease, Lessee agrees that all actions or proceedings arising directly or indirectly from this lease shall be litigated only in courts having situs within the State of New York and the Lessee hereby consents to the jurisdiction of any local, state or federal court located within the State of New York and waives personal service of any and all process upon the

Lessee herein, and consents that all such service or process shall be made by certified mail, return receipt requested, directed to the Lessee at the address hereinabove stated; and service so made shall be complete two (2) days after the same shall have been posted as aforesaid."

Quintin knowingly, intelligently, and deliberately consented to be sued in the courts of New York. Said provision is unequivocal and unambiguous.

As part of the consideration for National executing the lease agreement, Dorothy K. Quintin, one of the defendants in this action, unconditionally guaranteed all sums due and to become due under the aforementioned lease by an instrument in writing, dated September 8, 1972 and containing a similar provision for jurisdiction and venue.

POINT 1PARTIES BY CONTRACT EXPRESSLY
STIPULATED TO NEW YORK VENUE

As part of consideration for National purchasing and leasing a computer, Quintin executed a lease agreement expressly consenting to New York Venue. Paragraph 16 of the lease reads in relevant part as follows:

"...ALL ACTIONS OR PROCEEDINGS ARISING DIRECTLY OR INDIRECTLY FROM THIS LEASE SHALL BE LITIGATED ONLY IN COURTS HAVING SITUS WITHIN THE STATE OF NEW YORK..."

There is no doubt as to the meaning or reasonable interpretation of paragraph 16. This construction places no undue hardship on defendants because they clearly agreed to their being subjected to suit in New York in event of default. The foregoing provision is valid and enforceable. A number of cases are directly in point on this question.

In National Equipment Rental, Ltd. v. Reagin, 338 F 2D 759 (1964) the court stated, at 762:

"Parties to a contract may agree in advance to submit to the jurisdiction of a given court. The public policy of New York does not forbid the making of a contract to submit to jurisdiction."

The public policy of the State of New York is not offended by the stipulation for local venue. In fact, CPLR, section 501 requires a written agreement fixing place of trial to be given

effect, subject only to court's power to change venue if an impartial trial cannot be had. Defendants have failed to allege or prove that an impartial trial cannot be had in New York. Regarding consent to jurisdiction in a particular forum, see also, National Equipment Rental, Ltd. v. Szukhent 375 U.S. 311 (1964).

The same venue provision was decided in National Equipment Rental, Ltd. v. Sanders, 271 F. Supp. 756 (1967). On the question whether parties may by agreement in advance of any claim or threat of litigation nominate certain courts as their exclusive resort, the court stated, at 761:

"...men may enforceably contract to submit their controversy to a named tribunal if the particular contract is not unreasonable or offensive to public policy."

Here the clause is good in the public policy perspective and does not collide with any local statutory policy. The contractual provision regarding venue was cautiously chosen as part of consideration for financing the purchase of the computer. Said clause was intended to prevent undue burden on the plaintiff by having to litigate any default by a lessee in various jurisdictions of the United States. In the present action, all of plaintiff's witnesses and records are in New York. To allow the transfer of this action would in effect subvert the intention of the parties.

It is strange indeed that defendants concede the validity of service of process made by certified mail pursuant to the same paragraph of the lease (16) as the venue provision. While, on the other hand, defendants claim in their motion (#29 E) that they failed to notice and to consciously assent to the terms of paragraph 16. Obviously, the defendants consented to this bargained for provision knowingly and intelligently and now seek to avoid it.

Even lacking a contractual venue provision, plaintiff's choice of forum should not be disturbed unless there is a strong and compelling reason in favor of the defendant. See, Ford Motor Co. v. Ryan, 182 F 2D 329 (1950), National Equipment Rental, Ltd. v. Centre Case Co., U.S.D.C.E.D.N.Y. (Roslyn J. 64C580 unreported), U.S. v. Gerber, 86 F. Supp. 175 (1949). On the facts and proof submitted, defendants failed to prove that there is a more compelling reason to transfer than the plaintiff's right of forum choice. Absent a venue stipulation, for removal to be justified it must appear that the balance of convenience so clearly preponderates against the plaintiff's choice of forum that the transfer may not be merely a shifting of the benefit of convenience and economy. See Franklin v. Blaylock, 218 F. Supp. 261 (1963), Ciprari v. Services Areos Cruzeiro do Sul, 232 F. Supp. 433 (1964).

POINT II

AUTHORITIES CITED BY DEFENDANTS IN
SUPPORT OF TRANSFER ARE NOT IN POINT

In support of transfer on the basis of convenience of parties and witnesses and the interest of justice, defendants cite Silverman v. Wellington Management Company, 298 F. Supp. 877 (1969), Spencer, White & Prentis, Inc. v. Jacet Construction Corp., 258, F. Supp. 473 (1966), and National Equipment Corporation v. McPhail Candy Corporation, 97 N.Y.S. 2D 687 (1950). All are readily distinguishable.

Silverman, supra. dealt with a shareholders' derivative action. There a transfer was granted where there was serious doubt as to the existence of venue in New York. The court, however, distinguished the case from an ordinary suit, stating on 879:

"Although plaintiff's choice of forum is entitled to a considerable weight, in a shareholders' derivative suit by a plaintiff with only a nominal financial interest in the claim on behalf of a widely scattered group of shareholders, each of whom could presumably have instituted such a suit, this factor is of less significance than in the ordinary lawsuit."

The factors relevant to the issue of transfer in Silverman, supra., are clearly inapplicable to the present action. Here plaintiff had a substantial financial interest with a stipulation to New York venue forming a part of consideration for plaintiff's

financing the computer in question.

In Spencer, White & Prentis, supra., a New York plaintiff sued a Massachusetts defendant for balance due on a contract to build a slurry-trench wall around foundation of a building in Boston. Transfer was allowed where the central issue of the entire case was whether plaintiff performed or breached his contract and it was necessary for court and jury to visit and view the building site. Spencer, White & Prentis, supra., involved a unique situation which is readily distinguishable from the case at hand. In the present action, the computer is not in issue. Defendants specifically and intelligently agreed, per paragraph 10 of the lease agreement, that the lessor (National) has made no warranties or representations, express or implied, with regard to the equipment. Therefore, any claim defendants may have regarding performance of the computer is subject to a prior, separate and distinct agreement, if any, between defendants and Burroughs Corporation and is not at issue here.

In McPhail, supra., the paramount question considered was whether defects in machinery constituted a breach of warranty and tests used by defendant in manufacturing, repairs, and proof of breakdown would be important to defendant's counterclaim. Plaintiff's action to recover the price of machine was unaffected by transfer. Court held that if not for the question of proving the breach of warranty, it would not have changed venue. Court stated at 689:

"...the place of trial will not be changed merely to suit the convenience of witnesses...To warrant such a change there must be a more compelling reason."

In the case at hand, National merely financed the equipment selected by Quintin. Per paragraph 10 of the lease agreement, Quintin specifically agreed that lessor (National) has made no representations or warranties, express or implied with respect to equipment selected by lessee (Quintin). If there are any warranties regarding said equipment they would have to be raised in a separate issue as between Quintin and Burroughs and not part of this action. Since the performance of the computer is irrelevant to the issues in this action, McPhail would not apply.

In support of a contention that the instant action can be conducted without oppression to either party only in the Central District of California, defendants cite the case of Peyser v. General Motors Corporation, 158 F. Supp. 526 (1958). The language of the court stated at 528:

"In resolving a motion of this kind (transfer) I must weigh the convenience of a trial in New York as against a trial in Wilmington to determine in which place the trial can better be conducted without oppression to either party."

The court continued at 529:

"...the burden nevertheless is upon the movant to show that the convenience of the parties and the interests of justice will be better served in the other district..."

Defendants failed to sustain their burden. Additionally, the case is distinguishable in that no contractual venue provision was involved. This court, has in the two cases of National Equipment Rental, Ltd. v. Centre Cast Co. (supra.) and National Equipment Rental, Ltd. v. Sanders (supra) had determined the issue as requested by the defendants herein and in both cases, which are on all fours with this case, that the venue should remain with the United States District Court for the Eastern District and this case does not present any distinguishing factors.

CONCLUSION

Plaintiff intelligently and specifically contracted to be bound by New York venue and authorities cited in support of a transfer are not in point on the facts and issues before the court. This court should NOT transfer this action to the Central District of California.

Dated: New York, New York.
August 13, 1973

Respectfully submitted,

GERALD S. JACOBS
Attorney for Plaintiff
410 Lakeville Road
Lake Success, N.Y. 11040

NICK LIMAR
On the Brief

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ AUG 14 1973 ★

TIME AM _____
P.M. _____

-----x
NATIONAL EQUIPMENT RENTAL, LTD.,
Plaintiff,

-against-

73 Civ. 825
Judge Bartels

BERNARD QUINTIN and THOMAS QUINTIN,
individually and d/b/a THE QUINTIN
COMPANY, co-partners under the laws
of the State of California, and
DOROTHY K. QUINTIN,

Defendants.

-----x
STATE OF NEW YORK)
COUNTY OF NASSAU) ss.:

Gerald S. Jacobs, being duly sworn, deposes and says:

1. I am the attorney for the plaintiff, National Equipment Rental, Ltd. and that I am fully familiar with the facts and circumstances as herein set forth.

2. This affidavit is submitted in opposition to the defendants' motion for an order seeking to transfer this action to the U.S. District Court in the Central District of California.

3. The plaintiff is a corporation that transacts business in most of the states of the United States with its principal place of business in the State of New York. It is because of this method of doing business that it has used and placed in its lease agreements the provision of service as is provided in paragraph 16 of the lease agreement, Exhibit B of the defendants' moving papers.

4. The plaintiff is a party who is really an innocent party to this transaction in that it was requested by the defendants to purchase for them a particular computer and it received from the defendants a signed receipt of equipment for this computer. Exhibit A annexed hereto.

5. In reliance upon the signed documents and never having been notified (which I realize is an issue to be determined later of any operational default of the equipment, the plaintiff paid the Burroughs Corporation for the equipment.

6. Paragraph 16 of the lease is an integral part of the consideration of the plaintiff paying for the equipment and entering into the lease and avoiding the necessity of being harassed by its lessees in having to then litigate a default situation, a situation which is only precipitated by the lessee in each of the states and jurisdictions of the United States.

7. The facts and circumstances as set forth herein are on an equal plateau as was decided in this Court in the matter of National Equipment Rental, Ltd. v. Sanders, 271 F. Supp. 756 (E.D.N.Y. 1967) and also is exactly the same as those facts as set forth in the action of National Equipment Rental, Ltd. v. Centra Cast Co., Inc. et al. U.S.D.C.E.D.N.Y. (Roslyn J. 64C580 unreported).

8. To have the Court acquiesce in the transference of this matter to the United States District Court in California would obviate the agreement between the parties which was that any action arising out of this agreement be litigated in a Court having a situs within the State of New York and that there is no

real pressing issue or facts demonstrated by the defendants which would require that this Court transfer the action.

The default herein was precipitated by the defendants, not by the plaintiff, the plaintiff has paid due consideration for the equipment, to wit, the sum of \$16,790.24.

9. The records of the plaintiff regarding this action are within New York, its witness, to wit, Mr. David Burroughs, resides in New York and that all competent testimony on behalf of the plaintiff would take place in New York.

10. The transference of this action would indeed be a hardship to the plaintiff in that it would be obviating its agreement with the defendants, that it would incur additional expenses for the plaintiff in addition to those already incurred by it, in that it would have to retain additional counsel and thus the plaintiff would be paying a penalty for granting credit to the defendants.

11. To have us believe that the defendants, successful business people, did not read the lease agreement when in fact above their signatures it clearly states that the provisions on the reverse side are part of this agreement and the fact that paragraph 16 is in much bolder print than the rest of the agreement and that it appears at the end of the agreement rather than being hidden in somewhere in the middle, clearly shows that there is no intent upon the part of the plaintiff to in any way lull the defendants into a false sense of security.

12. The desire of the defendants to bring the Burroughs Corporation into the action, which may or may not be heeded, will not be subverted by the retention of this action here in New York as the Burroughs Corporation is a fairly large size organization, which does business in the State of New York and can readily be served within the State of New York.

13. In reality there cannot be any defense to this agreement based upon the failure of the equipment to operate as the reading of the agreement, and in particular, paragraph 10 clearly states that the plaintiff has no responsibility for the maintenance of the equipment nor does it make any representations or warranties which are expressly excluded and that it could appear that the plaintiff would have no liability, again this is an issue not to be determined at this time.

14. The defendants allude to a subtle policy of the plaintiff in using a California company. The lease very clearly on its face, shown in defendants' Exhibit B, sets forth the name and address of the plaintiff quite boldly, and at the bottom of the lease it clearly says Accepted at Lake Success, N.Y., which appears right next to the signature of the defendants and also the guarantees, (defendants' Exhibit B) contains the same provisions of service as the lease. It is quite clear that the plaintiff was not using any subtle policy and that the mailings consisting of the invoice and a letter dated August 7, 1972 were not instruments that were readily executed by the defendants or in fact probably never even carefully read by them with respect to where the plaintiff is located and that in fact there are no affidavits to this effect, but only the affidavit of the defendants' attorney.

- 4 -

15. The argument raised in paragraph 31 of defendants' moving papers with respect to the equipment is not distinguishable and does not raise facts sufficient to transfer this matter to California and in fact the plaintiff does have the equipment and does not intend to sell the equipment at this time and in fact if they did seek to sell it, they would be required under Article 9 of the Uniform Commercial Code, to give notice to the defendants of any such sale. This notice would give the defendants ample opportunity to bring whatever action they deem necessary to protect themselves and this would give them that protection as it has complete jurisdiction over the parties. I might add that the equipment was turned over by the defendants to the plaintiff without any legal action required on behalf of the plaintiff.

16. In review, to transfer this action to the State of California would deprive the plaintiff of its bargain and consideration with the defendants and would, if effectuated, seriously impair the operations of the plaintiff and that it should not be placed in a hardship position because of the acts of the defendants.

WHEREFORE, your deponent respectfully requests that the motion of the defendants be denied in its entirety and that the defendants be required to file and serve their answer within 10 days after entry of an order hereof.

Gerald S. Jacobs
GERALD S. JACOBS

Sworn to before me this
13 day of August, 1973

John E. Friedman

NOTED
Filed in District Court
Commission Expires March 30, 1974

National Equipment Rental, Ltd.

P. O. BOX 473, N. NEW HYDE PARK, N. Y. 11040

THE QUINTIN COMPANY
4524 West 1st Street
Santa Ana, California

IN REPLY REFER TO:

Lease No. 86 792
Schedule A

Attention: Mr. Bernard Quintin

Gentlemen:

We have been advised by the vendor that the equipment covered by the above mentioned lease has been delivered to you.

In order that we may approve the vendor's invoice for payment, please sign the receipt of equipment below and return to the writer at your earliest convenience.

Very truly yours,

NATIONAL EQUIPMENT RENTAL, LTD.

J. Farinella

We have received the following equipment in good condition and as ordered and hereby accept it.

<u>ITEM</u>	<u>SERIAL NO.</u>	<u>VENDOR</u>
1 Burroughs L2301-608 Mini-Computer		BURROUGHS CORP.
1 Burroughs A562 Tape Perforator		
1 Burroughs A581 Tape Reader		

BERNARD QUINTIN and THOMAS QUINTIN
Individually and dba THE QUINTIN COMPANY

8-18-72
Date

By: Bernard Quintin (title)

By: Thomas Quintin

Sworn to before me, this 15th day of AUGUST 1972
by James J. Friedman
FAYE FRIEDMAN
NOTARY PUBLIC, STATE OF NEW YORK
No. 30-6457-140
Qualified in New York

STATE OF NEW YORK, COUNTY OF

ss.:

AFFIDAVIT OF PERSONAL SERVICE

being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at

That on the _____ day of _____ 19____ at No. _____
upon the _____ deponent served the within

person so served to be the person mentioned herein, by delivering a true copy thereof to _____ personally. Deponent knew the
Sworn to before me, this _____ day of _____ 19____ therein.

GUARANTEE OF PAYMENT

In consideration of One (\$1.00) Dollar in hand paid, the receipt of which is hereby acknowledged, and in consideration of the execution by NATIONAL EQUIPMENT RENTAL, LTD. of a written Lease No. 86 792, dated _____, and all schedules now or hereafter made a part thereof, which Lease and Schedules are hereinafter called the Lease, the undersigned for himself, his heirs, executors, administrators, successors and assigns, jointly and severally, hereby irrevocably and unconditionally guarantees payment when due, whether by acceleration or otherwise, of any and all the obligations and liabilities due and to become due to Lessor from

~~Cot-Partners~~ BERNARD QUINTIN and THOMAS QUINTIN, Individually and dba THE QUINTIN COMPANY
Under The Laws of the State (Name of Lessee) of California
4524 West 1st Street, Santa Ana, California
(Address of Lessee)

as Lessee under said Lease, together with all interest thereon and all attorneys' fees, costs and expenses of collection incurred by the Lessor in enforcing any of such obligations and liabilities.

The undersigned acknowledges notice of the intended assignment of the aforesaid Lease and hereby consents to such assignment and specifically agrees that this Guarantee is and shall be an open and continuing Guarantee and all obligations and liabilities to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon and shall continue in full force and effect, notwithstanding any (a) change in rentals or other obligations under said Lease, (b) renewals, modifications, additions or extensions thereto or extensions of time to perform any of the obligations thereunder; and waives notice of the assignment by NATIONAL EQUIPMENT RENTAL, LTD., and waives notice of any such changes, renewals, modifications, additions, extensions or of any default by the Lessee thereunder. The undersigned further agrees and consents to any assignment of this Guarantee, in which event it shall enure to the benefit of any such assignee with the same force and effect as though the said assignee was specifically named herein and hereby waives any notice of any such assignment.

No invalidity, irregularity, or unenforceability of all or any part of the obligations and liabilities hereby Guaranteed or of any security therefor shall effect, impair or be a defense to this Guarantee, and this Guarantee is a primary obligation of the undersigned.

This instrument shall be deemed to have been made in Nassau County, New York, and shall be interpreted in accordance with the laws of the State of New York, and as part of the consideration for the Lessor's execution of the aforesaid Lease, the undersigned Guarantor hereby agrees that any and all actions or proceedings arising directly or indirectly from this Guarantee shall be litigated in courts having a situs within the State of New York, and the undersigned Guarantor hereby consents to the jurisdiction of any local, State or Federal Court located within the State of New York, and the undersigned Guarantor hereby waives personal service of any and all process, and consents that all such service of process may be made by certified or registered mail, return receipt requested, directed to the undersigned Guarantor at the address indicated below; and service so made shall be complete two (2) days after the same has been posted as aforesaid.

The undersigned, if more than one, shall be jointly and severally liable hereunder and the term "undersigned" wherever used herein shall mean the undersigned or any one or more of them. Any one signing this guarantee shall be bound hereby, whether or not any one else signs this guarantee at any time.

Dated: Sept 8, 1972, the _____ day of _____, 19____

Bernard K. Quintin (City and State)
(wife) residing at 571 Stuyvesant Pl. Cost Mesa, Calif
residing at _____
residing at _____
residing at _____
residing at _____
residing at _____

STATE OF California
COUNTY OF Orange ss:

On this 8th day of September 1972, before me personally appeared

Bernard K. Quintin

to me known, and known to me to be the person(s) described in and who executed the foregoing instrument, and (t) s he(y) (sexually) acknowledged to me that (t) s he(y) executed the same

G. RICHARD NOTHE
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
OF ORANGE COUNTY

G. Richard Nothe
Notary Public
(Affix Stamp and Seal)

STATE OF NEW YORK, COUNTY OF

CERTIFICATION BY ATTORNEY

The undersigned, an attorney admitted to practice in the courts of New York State, certifies that the within has been compared by the undersigned with the original and found to be a true and complete copy.

Dated:

STATE OF NEW YORK, COUNTY OF

ATTORNEY'S AFFIRMATION

The undersigned, an attorney admitted to practice in the courts of New York State, shows: that deponent is the attorney(s) of record for in the within action; that deponent has read the foregoing and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. Deponent further says that the reason this verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated:

STATE OF NEW YORK, COUNTY OF

ss.:

INDIVIDUAL VERIFICATION

deponent is the being duly sworn, deposes and says that in the within action; that deponent has read the foregoing and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. Sworn: to before me, this day of 19

STATE OF NEW YORK, COUNTY OF

ss.:

CORPORATE VERIFICATION

of being duly sworn, deposes and says that deponent is the named in the within action; that deponent has read the foregoing and knows the contents thereof; and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true. This verification is made by deponent because is a corporation. Deponent is an officer thereof, to-wit, its The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me, this day of 19

STATE OF NEW YORK, COUNTY OF Nassau

ss.:

AFFIDAVIT OF SERVICE BY MAIL

Linda Szewerbicki being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at Roslyn Heights, N.Y. 11762 deponent served the within affidavit & memorandum of attorney(s) for upon Golenbock and Baroli in this action, at 60 E. 42nd St., N.Y., N.Y. 10017 by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in a post office — official depository under the exclusive care and custody of the United States post office department within the State of New York. Sworn to before me, this 13th day of August 19 73

Raye Friedman

RAYE FRIEDMAN
JULY 30, 1973
NEW YORK

Linda Szewerbicki

STATE OF NEW YORK, COUNTY OF

ss.:

AFFIDAVIT OF PERSONAL SERVICE

being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at

That on the day of 19 at No. deponent served the within

the person so served to be the person mentioned and described in said papers as the Sworn to before me, this day of 19

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

94
FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

-----x
NATIONAL EQUIPMENT RENTAL, LTD.,

Plaintiff,

-against-

BERNARD QUINTIN and THOMAS QUINTIN,
individually and d/b/a THE QUINTIN
COMPANY, co-partners under the laws
of the State of California and
DOROTHY K. QUINTIN,

Defendants.
-----x

★ AUG 17 1973 ★

TIME A.M.

P.M.

REPLY AFFIDAVIT

73 Civ. 825

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

LEONARD W. WAGMAN, being duly sworn, deposes and says:

1. I am a member of the firm of Golenbock and Barell and am fully familiar with the facts and circumstances relating to the instant action. This reply affidavit is respectfully submitted in further support of defendants' motion to transfer and in response to the opposing affidavit of plaintiff's counsel, Gerald Jacobs, Esq.

2. It is respectfully submitted that the opposing affidavit by its content as well as by significant omissions demonstrates the correctness of defendants' position and fully supports transfer of this action to the California forum where virtually every operative activity of the parties took place and where virtually all relevant information necessary to defend this action properly is located.

(8)

3. The admission contained in Paragraph 5 of the Jacobs affidavit is of vital importance. Plaintiff's counsel recognizes that an ultimate issue for determination in this litigation is whether or not plaintiff had notice of any defects in the Burroughs equipment prior to plaintiff paying Burroughs for such equipment. Plaintiff's counsel contends that plaintiff made such payment "never having been notified...of any operational default of the equipment...". My affidavit submitted in support of defendants' motion, makes it clear beyond question that defendants communicated to both National Equipment of California, and to Burroughs Corporation, in California, concerning defects in the equipment (para. 17, moving aff.).

4. The very method of doing business adopted herein by the plaintiff in using a California corporation and the employees thereof creates this crucial factual issue which plaintiff's counsel concedes must be determined in this action; and implicit in the facts and the concession of plaintiff's counsel is that all of the evidence relevant to this issue, i.e. witnesses, documents and the equipment itself are located in California.

5. The case at bar can hardly be deemed parallel to the Sanders and Centra cases cited in Paragraph 7 of the Jacobs affidavit. In any event, we quote again the language of Judge Dooling in Sanders:

"it [the court] may not treat the parties agreement on venue as depriving it of the power to change venue if the interests of justice require transfer".

We respectfully refer the Court to the discussion of the Sanders case at pages 9 and 10 of defendants' memorandum on the instant motion.

6. At bar, defendants were misled -- and the Court can readily see as the facts developed how this occurred -- into believing they were dealing with California entities. An unsuspecting consumer was entrapped into agreeing to be dragged cross-country, away from the situs of the wrong, away from the consumer's domicile, away from the situs of the evidence, to litigate in a distant forum. This device is intended to discourage consumers from litigating on the merits and is economic coercion employed to compel consumer submission and surrender to unjustified claims. The choice of forum should not be made merely because the dominant economic party to the transaction includes in a contract the proverbial "small print" stating that the consumer waives its right to litigate in any jurisdiction other than the domicile of the seller.* The language referred to above in Judge Dooling's decision in Sanders demonstrates that the courts will not disregard the equities and will be ever vigilant to protect the interests of parties who find themselves in the position as do plaintiffs at bar.

7. Of similar significance in the Jacobs opposing affidavit (par. 9) is the reference to Mr. David Burroughs, a New York resident as plaintiff's witness. Who is Mr. Burroughs? Is he merely a custodian of plaintiff's books, records and the file for this transaction? Mr. Jacobs clearly omits the mention of the names of the numerous employees and agents of plaintiff in California who negotiated the underlying transaction at bar and who are not subject to the subpoena powers of the United States District Court for the Eastern District of New York.

* None of the other numerous documents involved contained such requirement.

8. Plaintiff further takes the liberty of speaking on behalf of the Burroughs Corporation (not yet a party hereto) in stating (Jacobs' Aff., para. 12) that Burroughs would have no objection to being impleaded in the instant action were it to remain in the Eastern District of New York. All negotiations between defendants and Burroughs were held in the State of California and it can be readily assumed that Burroughs would vehemently oppose any attempt to bring its California officers or employees to New York City especially where the Burroughs equipment, which lies at the very heart of the instant suit, is located in California.

9. In Paragraph 10 of the Jacobs opposing affidavit, he states that "the [plaintiff] would have to retain additional [California] counsel". It is well settled that the convenience of counsel is not a factor to be considered on a motion for transfer. Transcontinental Service Corp. v. True Temper Corp., 319 F. Supp. 920 (S.D.N.Y. 1970; Pollack, J.); Saraf v. Chatham Carpet Mills, Inc., 275 F. Supp. 951 (S.D.N.Y. 1967; Weinfeld, J.). Furthermore, a company with a nationwide stature as that of plaintiff would have no difficulty in obtaining adequate representation in California.

10. Plaintiff cannot deny the gross economic disparity between the parties. Defendants' company is a father-and-son operation requiring full-time day-to-day dedication. By comparison, plaintiff operates a nationwide organization with scores of officers and employees. Each of the three defendants will no doubt be compelled by plaintiff to travel to New York City from California on at least two occasions during the course of this litigation; once for several days during the taking of

pre-trial discovery and again, perhaps for even a longer time during the pendency of the trial. Succinctly stated, defendants travelling expenses alone could well be more than ten percent (10%) of plaintiff's claim. To require defendants to bear such inordinate expenses is clearly not in the interest of justice.

11. By reason of the foregoing, it is respectfully submitted that plaintiff's motion for an order transferring the instant action to the Central District of California be granted in its entirety.

Leonard W. Wagman
Leonard W. Wagman

Sworn to before me this

day of August, 1973.

Notary Public

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK
4 -----X

5 NATIONAL EQUIPMENT RENTAL, LTD., :

6 Plaintiff, :

7 -against- :

73 C 825

8 BERNARD QUINTIN & THOMAS QUINTIN, :
9 Individually and a/k/a THE QUIN- :
10 TIN COMPANY, Co-Partners under :
the Laws of the State of Califor- :
11 nia, and DOROTHY K. QUINTIN, :

12 Defendants. :
13 -----X

14 United States Courthouse,
15 Brooklyn, New York
16 August 17, 1973
10:30 O'clock A.M.

17 B e f o r e :

18 JOHN R. BARTELS, U.S.D.J.
19
20
21
22

23 SHELDON SILVERMAN
24 ACTING OFFICIAL COURT REPORTER
25

99
FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
★ AUG 20 1973 ★
TIME A.M. _____
P.M. _____

APPEARANCES:

GERALD S. JACOBS, ESQ.,
Attorney for the Plaintiffs
410 Lakeville Road
Lake Success, New York 11040

GOLENBOCK & BARELL,
Attorneys for the Defendants.
60 East 42nd Street,
New York, New York 10017.

BY: EDWARD D. TANENHAUS, ESQ.
Of counsel.

.....

THE COURT: Defendant in this case moves for an order transferring the action to the United States District Court for the Central District of California, pursuant to 28 U.S.C. 1404 (a) and for an order extending time to answer or to move with respect to the complaint until 30 days following the entry of an order in this instant motion, pursuant to F.R.CIV.P., Rule 6 (b). Now, this is an action on equipment lease agreement which was brought by the plaintiff in the Supreme Court of Nassau County and removed to this Court by defendants on June 7, 1973, pursuant to 28 U.S.C., Section 1441.

Plaintiff seeks \$22,743-plus interest as the amount allegedly due from the defendant under the lease agreement upon the defendants' default and attorneys' fees of \$4,548.60, also allegedly due upon default.

The lease contains the following provision, which among other things says: "...Lessee agrees that all actions or proceedings arising directly or indirectly from this lease shall be litigated only in courts having situs within the State of New York

and the Lessee hereby consents to the jurisdiction of any local, State or Federal Court located within the State of New York, and waives personal service of any and all process upon the lease herein...

Of course, the Court realizes no contract can deprive a Court of its discretion to decide the venue of a case before it in accordance with the requirements of justice, but in reaching such a decision as to whether removal shall or shall not be made, it cannot be denied that the prior agreement of the parties should be given serious consideration.

The Plaintiff is a Delaware corporation having its principal place of business in Nassau County, New York. The defendants, Bernard and Thomas Quintin, doing business as the Quintin Company, a co-partnership under the laws of the State of California and defendant Dorothy K. Quintin, are all residents of Orange County, California. None of the defendants has a residence or office for the transaction of business in New York.

Defendants allege that their initial contact

1
2 in the lease negotiation was with the National
3 Equipment Rental Ltd., of California, which is
4 a local California leasing corporation; that all
5 the times between the initial contact and their
6 alleged default, the defendants believed they
7 were dealing with the National Equipment Rental
8 Limited of California.

9 Although National of California did
10 make the initial contact with the defendants,
11 it is undisputed that this company did send the
12 defendants a lease agreement from the plaintiff,
13 National Equipment Rental, Ltd., which stipulated
14 the agreement was to be accepted in New York and
15 would be deemed to be made in New York and the
16 parties agree that the situs of any action arising
17 out of the agreement was to be in New York.

18 The signature page of the lease states in
19 large capital letters: "ACCEPTED AT ELMONT, N.Y."
20 thus putting the defendants on notice that this was a
21 New York contract.

22 Agreement in advance to submit to the
23 jurisdiction of a given Court is proper and will
24 violate neither public policy nor equity.

25 National Equipment Rental Ltd. v. Szukhent

1
2 375 U.S. 311, 316 (1964) arising originally in
3 the Eastern District of New York, and also,
4 Bremen v. Zapata Offshore Company, 407 U.S. 1,
5 8-11, 1972.

6 The defendants argue that they are a
7 small family business consisting of two partners
8 and one other employee, a secretary-bookkeeper.
9 They allege that the absence of the defendant from
10 their business for trial in New York would seriously
11 disrupt their normal operations.

12 Defendants also argue any witnesses they
13 may have will not be subject to the compulsory
14 process of the New York State courts and that
15 the expense of transporting such witnesses to
16 New York would be prohibitive; however, the
17 defendants do admit they are not yet certain
18 that they will require the testimony of the
19 California witnesses and, of course, depositions
20 can be taken in California and perpetuated for
21 use at the trial, if necessary.

22 It appears that the transaction between
23 the parties was an arrangement by which
24 plaintiff was, in effect, financing the
25 purchase of the equipment from Burroughs

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Corporation and that, by agreement, the Plaintiff has made no warranties or representations concerning the condition of the equipment.

The defendants do not deny that if Burroughs is to be impleaded in this action, it can be served with process in New York, where it is doing business. While an agreement between the parties on venue cannot deprive the Court of the power of transfer of the case, if the interests of justice so require, National Equipment Rental, Ltd., v. Sanders, 271 F. Supp. 756 (E.D.N.Y. 1967).

This Court has stated before it must give weight to that agreement. Nor should the Court lightly disturb the plaintiff's choice of forum. Ford Motor Company v. Ryan, 182 Fed. 2d 389 (2d Cir. 1950).

I'm afraid the defendant in this case has failed to persuade the Court that it should ignore the agreement between the parties and transfer of this case to California.

Accordingly, the Court will not order the transfer and the defendants' motion

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

must be and hereby is denied.

The Court will grant the defendants' motion for an order extending time to answer or move until 30 days from the date of entry of this order into this record.

So ordered.

You can have the Court Reporter transcribe that.

* * * * *

I hereby certify that the foregoing is a true and accurate transcript from my stenographic notes in this proceeding.

[Signature]
Official Court Reporter
U.S. District Court for the
Eastern District of N.Y.

32B

107

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

* OCT 3 1973 *
ME A.M. 10:15
P.M.

-----x
NATIONAL EQUIPMENT RENTAL, LTD.,

Plaintiff,

-against-

BERNARD QUINTIN and THOMAS QUINTIN,
individually and d/b/a THE QUINTIN
COMPANY, co-partners under the laws
of the State of California, and
DOROTHY K. QUINTIN,

ANSWER

73 Civ. 825

Defendants.
-----x

Defendants, Bernard Quintin and Thomas Quintin,
individually and d/b/a the Quintin Company, and Dorothy K.
Quintin, by their attorneys, Golenbock and Barell, in answer
to the complaint respectfully allege:

1. Deny having knowledge or information sufficient
to form a belief as to the truth of each of the allegations
contained in paragraph 1 of the complaint.

2. Deny each of the allegations contained in para-
graphs 3, 6, 9 and 13 of the complaint.

3. Deny having knowledge or information sufficient
to form a belief as to the truth of each of the allegations
contained in paragraphs 2 and 8 of the complaint, except admit
that on or about August 18, 1972, Bernard Quintin and Thomas
Quintin executed the document annexed to the complaint as
Exhibit A, and defendants respectfully refer to said document

4. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 4 and 5 of the complaint, except deny the allegations contained therein that defendant has defaulted.

5. Repeat and reallege each and every allegation set forth in paragraphs 1 through 4 of their Answer with the same force and effect as if fully set forth herein in answer to paragraph 7 of the complaint.

6. Repeat and reallege each and every allegation set forth in paragraphs 1 through 5 of their answer with the same force and effect as if fully set forth herein in answer to paragraph 10 of the complaint.

7. Deny having knowledge or information sufficient to form a belief as to the truth of each of the allegations contained in paragraph 11 of the complaint except admit that on or about September 8, 1972, Dorothy K. Quintin executed the document annexed to the complaint as Exhibit B and defendants respectfully refer to said document as the best evidence of its term.

8. Deny having knowledge or information sufficient to form a belief as to the truth of each of the allegations contained in paragraphs 12 of the complaint except defendants deny the allegation contained therein that there are sums due under the alleged lease agreement.

FOR A FIRST AFFIRMATIVE DEFENSE

9. Denies that plaintiff performed the conditions of the alleged lease agreement between plaintiff and defendants

and specifically denies that plaintiff complied with the terms and conditions set forth in paragraph THIRD of the Lease (Exhibit "A" to the Complaint) which provides:

"Lessee requests Lessor to purchase the equipment from a vendor selected by the Lessee and arrange for delivery which shall be deemed complete upon arrival at Lessee's premises or when otherwise received by Lessee's agent..."

10. By reason of its failure to perform its obligations under the Lease, plaintiff has failed to state a claim against defendants upon which relief can be granted.

FOR A SECOND AFFIRMATIVE DEFENSE

11. The document attached to the Complaint as Exhibit "A" was executed by defendants Bernard and Thomas Quintin on or about August 18, 1972.

12. National Equipment Rental, Ltd., through its agent, National Equipment Rental, Ltd. of California, intentionally and deliberately misled and deceived said defendants, both prior and subsequent to their execution of the document, into believing that the party with whom they were contracting was National Equipment Rental Ltd. of California.

13. Prior to the notification by National Equipment Rental, Ltd. on or about December 7, 1972 that it had "accepted" the defendants' offer of lease, and prior to National Equipment Rental Ltd.'s performance of any of the terms and conditions of the lease, defendants communicated

to National Equipment Rental, Ltd., through its California agent as aforesaid, the revocation of their offer to lease the equipment by reason of the palpably defective and wholly unsuitable condition of the equipment.

14. By reason of defendant's revocation of the offer prior to acceptance by plaintiff, no contract of lease between the parties was ever formed and plaintiff has failed to state a claim against defendants upon which relief can be granted.

FOR A THIRD AFFIRMATIVE DEFENSE AND
FIRST COUNTERCLAIM BY DEFENDANTS
BERNARD AND THOMAS QUINTIN, INDIVIDUALLY
AND d/b/a THE QUINTIN COMPANY.

JURISDICTION

15. The present action is brought for damages and the amount in controversy exceeds \$10,000 exclusive of interests and costs.

16. Jurisdiction of this Court is based upon diversity between the parties as required by 28 U.S.C. §1332.

Description of the Parties

17. Defendants Bernard and Thomas Quintin, individually and d/b/a The Quintin Company, co-partners under the laws of the state of California, are residents of the State of California.

18. Upon information and belief plaintiff National Equipment Rental, Ltd. is a corporation having its principal place of business in the state of New York.

19. Defendants repeat and reallege each and every allegation contained in paragraphs 11 through 13 of their answer with the same force and effect as if fully set forth herein.

20. By reason of the foregoing, in the event that the Court determines that a contract exists, defendants are entitled to judgment granting rescission of such contract of lease.

FOR A FOURTH AFFIRMATIVE DEFENSE

21. Defendants repeat and reallege each and every allegation contained in paragraphs 11 through 20 of their answer with the same force and effect as if fully set forth herein.

22. By reason of the foregoing, defendant Dorothy K. Quintin is entitled to judgment dismissing the complaint against her.

FOR A FIFTH AFFIRMATIVE DEFENSE

23. On or about May 16, 1973, plaintiff obtained possession, custody and control from defendants Bernard and Thomas Quintin of the equipment described in the Lease (Exhibit "A" to the Complaint).

24. Said equipment constituted the sole consideration for defendants' obligation under the Lease and by reason of plaintiff's acceptance of defendant's surrender of the equipment, defendants have been relieved of all obligation under the Lease.

112

FOR A SIXTH AND PARTIAL DEFENSE

25. Defendants repeat and reallege each and every allegation contained in paragraphs 23 and 24 of this Answer with the same force and effect as if fully set forth herein.

25. In the alternative, in the event that this Court determines that defendants are liable to plaintiff, the amount of plaintiff's recovery must be reduced by either (i) the reasonable value of said equipment at the time possession was obtained by plaintiff or (ii) the amount realized by plaintiff from its resale, whichever amount is greater.

WHEREFORE, defendants demand judgment:

- (1) Dismissing the complaint in its entirety;
- (2) On their first counterclaim, granting rescission of the Lease which is attached to the Complaint, as Exhibit "A"; and
- (3) For such other relief as to the Court may seem just and proper.

Dated: New York, New York
October 1, 1973.

GOLENBOCK AND BARELL
Attorneys for Defendants
60 East 42nd Street
New York, N.Y. 10017
986-3300

By Samuel H. Weyman
A Member of the Firm

COUNTY OF NEW YORK } ss.

~~being duly sworn, deposes and says I am not a party to the action am over eighteen years of age, and am employed by Golenbock and Barell,~~

Herman Kaplan

, under penalty of perjury, states: I am an attorney at law admitted to practice in the State of New York and am associated with Golenbock and Barell,

attorneys of record for Defendants herein.

On October 1, 1973 , I served the within

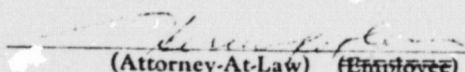
ANSWER

upon Gerald S. Jacobs, Esq.

attorney(s) for Plaintiff in this action, at
410 Lakeville Road, Lake Success, N.Y. 11040
and upon

the address(es) designated by said attorney(s) for that purpose, by depositing (a) true cop(y)(ies) of same enclosed in (a) postpaid properly addressed wrapper(s) in a (post office) (an official depository) under the exclusive care and custody of the United States post office department within the State of New York.

Dated: October 1, 1973


(Attorney-At-Law) (Employee)

Sworn to before me, this
day of -- -- 10 --

note o.k.

Bartels

Will submit order

114

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NATIONAL EQUIPMENT RENTAL, LTD.

Plaintiff,

-against-

BERNARD QUINTIN And THOMAS QUINTIN,
individually and d/b/a THE QUINTIN
COMPANY, co-partners under the laws
of the State of California, and
DOROTHY K. QUINTIN,

Defendants.

DEC 11 1973

NOTICE OF MOTION
TO RELIEVE ATTORNEYS
OF RECORD

73 Civ. 825
JUDGE BARTELS

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit of Leonard W. Wagman, Esq., sworn to the 6th day of December 1973, the firm of Golenbock and Barell will move this court, before the Honorable John R. Bartels, at the United States Courthouse, Cadman Plaza, Brooklyn, New York on December 20, 1973 at 9:30 in the forenoon, for an order, pursuant to Rule 4(c) of the general rules of the United States District Court for the Eastern District of New York, relieving the firm as attorney of record for defendants in the above entitled proceedings, and for such further relief as to the court may seem just and proper.

Dated: New York, New York
December 6, 1973

Yours, etc.

GOLENBOCK AND BARELL
Attorneys for Defendants
60 East 42nd Street
New York, New York 10017
(212) 986-3300

By: Leonard W. Wagman
A Member of the Firm

TO: Gerald S. Jacobs, Esq.
410 Lakeville Road
Lake Success, New York 11040

13

Kenneth J. Golden, Esq.
Golden and Neal
7842 Westminster Avenue
Westminster, California 92683

Messrs. Bernard and Thomas Quintin
The Quintin Company
3303 Harbor Boulevard
Building H, Suite 9
Costa Mesa, California

The Quintin Company
4524 West First Street
Santa Ana, California

Ms. Dorothy Quintin
541 Sturgeon Drive
Costa Mesa, California

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

★ JAN 31 1974 ★

TIME AM _____

PM _____

NATIONAL EQUIPMENT RENTAL, LTD.,

Plaintiff,

- against -

73 Civ. 825

Judge Bartels

BERNARD QUINTIN and THOMAS QUINTIN,
individually and d/b/a THE QUINTIN
COMPANY, co-partners under the laws of
the State of California, and DOROTHY
K. QUINTIN,

Defendants.

STATE OF NEW YORK)
COUNTY OF NASSAU) ss.:

Nick Limar, being duly sworn, deposes and says:

1. I am the associate attorney to the attorney of record for the plaintiff, National Equipment Rental, Ltd. and that I am fully familiar with the facts and circumstances as herein set forth.

2. This affidavit is submitted to show a good cause of action and a valid excuse for failure to appear for a pre-trial status report on 12/13/73.

3. That heretofore plaintiff leased certain equipment to Bernard Quintin and Thomas Quintin, individually and d/b/a The Quintin Company, Co-Partners under the laws of the State of California pursuant to a written lease designated 86 792 A, copy of which is attached hereto and marked Exhibit A.

4. That said defendant defaulted in paying the rentals due under said lease for the month of January, 1973 and the months subsequent thereto.

5. That plaintiff, in accordance with the terms of said lease, duly notified said defendant of its default, but defendant failed to cure the same within the time limited under the terms of said lease.

6. That the default herein was precipitated by the defendants.

7. That the plaintiff has paid due consideration for the equipment which was purchased and leased at the defendants' request.

8. That the dismissal of this action would deprive the plaintiff of its bargain and consideration and in effect create a windfall for the defendants.

9. That the above action was previously set for a status report for 11/19/73 and was adjourned at the request of the defendants and with plaintiff's consent thereto.

10. That on the day in question, 12/13/73, the undersigned left his home in Bay Shore, New York (approximately 50 miles from court) early in the morning, allowing sufficient time to arrive prior to 9:30 A.M., the scheduled time for the status report.

11. That due to unusually heavy and congested traffic, the undersigned arrived one half hour after the case was called as can be verified by the court's clerk and secretary.

12. WHEREFORE, your deponent respectfully requests that the dismissal of the complaint be vacated and the action remanded and set down for trial.

Sworn to before me this
14th day of January, 1974

Nick Limar
NICK LIMAR

Doyle J. ...

PAUL J. ...
NOTARY PUBLIC ... New York
... County ...

Gerald S. Jacobs
Attorney at Law

118

410 Lakewood Road
Lake Success, N.Y. 11040
(212) 343-1005

January 21, 1974

Judge Bartels
U.S. District Court for the
Eastern District of New York
225 Cadman Place East
Brooklyn, New York

Att: Clerk

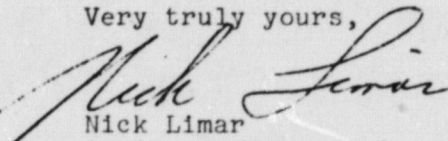
Re: National Equipment Rental, Ltd.
v. Bernard Quintin, et al.
73 Civ. 825

Gentlemen:

An affidavit dated December 18, 1973 showing a good cause of action and a valid excuse for plaintiff's failure to appear for a pre-trial status report on December 13, 1973 was submitted. The application further requested that the dismissal of the complaint be vacated and set aside.

Please advise the status of any decision in this respect.

Very truly yours,



Nick Limar
Assistant General Counsel

NL:lb

December 19, 1973

Golenbock and Barell
60 East 42nd Street
New York, New York 10017

Att: Andrea Hyde, Esq.

Re: National Equipment Rental, Ltd.
v. Quintin, et al.

Dear Miss Hyde:

Confirming our conversation of this date, enclosed find a copy of affidavit submitted to Judge Bartels requesting that the dismissal of the complaint be vacated.

Very truly yours,

Nick Limar
Associate Attorney

ML:lb
Enc.

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ JAN 31 1974 ★

TIME A.M.

P.M.

73-8425

Gerald S. Jacobs
Attorney at Law

410 Lakeville Road
Lake Success, NY 11040
(212) 343-1005

January 24, 1974

Judge Bartels
U.S. District Court for
the Eastern District of N.Y.
225 Cadman Plaza East
Brooklyn, New York

Att: Clerk

Re: National Equipment Rental, Ltd.
v. Bernard Quintin, et al.

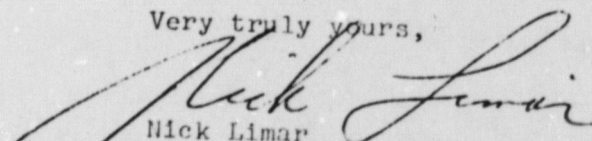
73 Civ. 825

Dear Sir:

Pursuant to your request, attached find a duplicate copy of my affidavit previously submitted on the 18th of December, 1973 showing a good cause of action and a valid excuse for plaintiff's failure to appear for a pre-trial status report on December 13, 1973. Enclosed also find another original copy of an order vacating dismissal to be signed by Judge Bartels.

Additionally attached find my file copy of the original affidavit, together with a cover letter to defendants' attorneys, Golenbock and Barell.

Very truly yours,


Nick Limar
Assistant General Counsel

NL:lb
Encs.

122

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT E.D. N.Y.

★ MAR 28 1974 ★

NATIONAL EQUIPMENT RENTAL, LTD.,

Plaintiff,

TIME A.M. _____
P.M. _____

-against-

BERNARD QUINTIN and THOMAS QUINTIN,
individually and d/b/a THE QUINTIN
COMPANY co-partners under the laws
of the State of California and
DOROTHY K. QUINTIN,

Defendants.

NOTICE OF ENTRY

73 Civ. 825

PLEASE TAKE NOTICE that the within is a true and
complete copy of an order which was duly entered in the office
of the Clerk of the United States District Court for the
Eastern District of New York on February 28, 1974.

Dated: New York, New York
March 26, 1974.

GOLENBOCK AND BARELL
60 East 42nd Street
New York, New York 10017
(212) 986-3300

By Leonard W. Legman
A Member of the Firm

TO: Gerald S. Jacobs, Esq.
Attorney for Plaintiff
410 Lakeville Road
Lake Success, New York 11040

Bernard Quintin, Thomas
Quintin and Dorothy K. Quintin
Defendants
c/o Bernard G. Quintin
1094 Cudahy Place #106
San Diego, California 92110

187

RECEIVED

121

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ JAN 31 1974 ★

RECEIVED

PAID

NATIONAL EQUIPMENT RENTAL, LTD.,

Plaintiff,

- against -

73 Civ. 825

Judge Bartels

ORDER VACATING DISMISSAL

BERNARD QUINTIN and THOMAS QUINTIN,
individually and d/b/a THE QUINTIN
COMPANY, co-partners under the laws
of the State of California and
DOROTHY K. QUINTIN,

Defendants.

Upon the annexed affidavit of Nick Limar, dated the 18th day of December, 1973, showing a good cause of action and a valid excuse for plaintiff's failure to appear for a pre-trial status report on 12/13/73, it is hereby

ORDERED, that the dismissal of the complaint be and the same hereby is vacated and set aside, and it is

FURTHER ORDERED that the action be remanded and set down for trial.

SO ORDERED

BROOKLYN, NEW YORK
JANUARY 20, 1974

U.S.D.J.

Frank Bartels

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
NATIONAL EQUIPMENT RENTAL, LTD.

Plaintiff,

-against-

BERNARD QUINTIN and THOMAS QUINTIN,
individually and d/b/a THE QUINTIN
COMPANY co-partners under the laws
of the State of California, and
DOROTHY K. QUINTIN,

Defendants.
-----X

:
:
73 Civ. 825
JUDGE BARTELS

:
:
ORDER

A motion having been made by the firm of Golenbock and Barell, for an order relieving the firm as attorneys of record for all defendants in this action, and Golenbock and Barell having submitted the affidavit of Leonard W. Wagman, Esq., sworn to the 12th day of December 1973, in support of said motion; and no opposition having been made thereto, it is

ORDERED that the said motion is granted and that the firm of Golenbock and Barell be and hereby is relieved as attorneys of record for all defendants in this action.

Brooklyn, New York
Dated: *February 28*, 1974

14 *John L. Bartels*
United States District Judge

STATE OF NEW YORK }
COUNTY OF NEW YORK }

being duly sworn, deposes and says: I am not a party to the action, am over eighteen years of age, and am employed by Golenbock and Barell,

Herman Kaplan, under penalty of perjury, states: I am an attorney at law admitted to practice in the State of New York and am associated with Golenbock and Barell,

attorneys of record for defendants

herein.

On March 26, 1974

, I served the within

ORDER WITH NOTICES OF ENTRY THEREOF
upon Gerald S. Jacobs, Esq.

attorney(s) for Plaintiff

in this action, at

410 Lakeville Road, Lake Success, New York 11040
and upon

Bernard Quintin, Thomas Quintin and Dorothy K. Quintin
c/o Bernard G. Quintin, 1094 Cudahy Place #106
San Diego, California 92110

the address(es) designated by said attorney(s) for that purpose, by depositing (a) true copy(ies) of same enclosed in (a) postpaid properly addressed wrapper(s) in a (post office) (an official depository) under the exclusive care and custody of the United States post office department within the State of New York.

Dated: March 26, 1974.

Herman Kaplan
(Attorney-At-Law) (Employee)

Sworn to before me, this 26th
day of March, 1974

FILE 125
COLENBOCK AND BARELL

60 EAST 42ND STREET

NEW YORK, N. Y. 10017

212-906-3300

CABLE: "COLEGAL"

March 26, 1974

MARTIN C. BARELL
JUSTIN M. GOLENBOCK
SEYMOUR KLEINMAN
DONALD D. SHACK
MARVIN B. TEPPER
HENRY C. SHAYS
ARNOLD RAYNOR
LEONARD W. WAGMAN
NORMAN J. MELL
BERNARD H. GOLDFUSS
ARTHUR M. HANDLER
ROBERT M. BIRNBAUM
STEVEN R. FRANKEL
ARTHUR C. SILVERMAN
CHARLES ZALAZNICK
SAM W. GALOWITZ
PETER ROTHENBERG
DAVID A. MANDEL
JEFFREY N. SIEGEL
RUDOLF CALLMANN
COUNSEL

AUSTIN D. GRAHAM
BENJAMIN L. SILVER
IRVING SHINOFF
FREDERICK R. WALLACH
MICHAEL R. LAZARUS
ROGER A. GERBER
MICHAEL A. LEVIN
MICHAEL C. SILBERBERG
LOUISE E. DEMBECK
JOEL A. FEERST
ARTHUR I. WEINSTEIN
MARCO G. STERN
H. JOSEPH MELLO
HARVEY SCHWARTZ
STEPHEN M. RATHKOPF
RICHARD M. RESNIK
ALBERT H. GORMAN
EDWARD D. TANENHAUS
JEROLD S. YALE
ROBERT S. GOODMAN
ANDREA HYDE
ROBERT J. SHANSKY
MICHAEL S. MULLMAN
RONALD S. KATZ
GEORGE T. SIMON
MICHAEL A. LEE

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
★ APR 1 1974 ★

TIME A.M.
P.M.

The Honorable John R. Bartels
Judge of The United States District Court
for The Eastern District of New York
Cadman Plaza
Brooklyn, New York 11201

Re: National Equipment Rental Ltd. v.
Bernard Quintin, et al., 73 Civ. 825

Dear Judge Bartels:

At the request of Bernard Quintin, one of the defendants in the above-entitled action for whom we served as attorneys of record until relieved by order of this Court dated February 28, 1974, I am apprising the Court of Mr. Quintin's current address and requesting that all papers hereafter served in this action be served upon him at that address:

Bernard G. Quintin
1094 Cudahy Place #106
San Diego, California 92110

Phone: 713-276-7304

Thank you for your consideration in this matter.

Very truly yours

Andrea Hyde
Andrea Hyde

AH:skk

cc: Gerald S. Jacobs, Esq.
Attorney for Plaintiff

Bernard Quintin

(19)

126

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
CLERK'S OFFICE
U. S. DISTRICT COURT E

NATIONAL EQUIPMENT RENTAL, LTD.,

MAR 24 1975

Plaintiff,

TIME A.M. 11

-against-

NOTICE OF MOTION

Civil Action No. 73C825

BERNARD QUINTIN and THOMAS QUINTIN,
individually and d/b/a THE QUINTIN
COMPANY co-partners under the laws of
the State of California and DOROTHY K.
QUINTIN,

Defendants.

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit of JEROME
HELLER, sworn to on the 20th day of March, 1975, the plaintiff
will move this court before the Honorable John R. Bartels at the
United States Courthouse, 225 Cadman Plaza, Brooklyn, New York,
on the 7th day of April, 1975, at 9:30 A.M. in the forenoon there-
of, for an order, restoring this matter to the calendar and
vacating the order of this court dated March 18, 1975, dismissing
the complaint.

Dated: Lake Success, N. Y.
March 20, 1975

Gerald S. Jacobs,
Attorney for Plaintiff
Office and P. O. Address
410 Lakeville Road
Lake Success, N. Y. 11040
(212) 343-1005

By Jerome Heller
Jerome Heller

To: Bernard Quintin, Thomas
Quintin and Dorothy K.
Quintin, Defendants
c/o Bernard G. Quintin
1094 Cudahy Place #106
San Diego, California 92110

21

By PAUL V. VICE Vice President
Authorized Representative

By PAUL V. VICE

127

Plaintiff,

AFFIDAVIT

BERNARD QUINTIN and THOMAS QUINTIN,
individually and d/b/a THE QUINTIN
COMPANY co-partners under the laws of
the State of California and DOROTHY K.
QUINTIN,

Defendants.

JEROME HELLER, being duly sworn, deposes and says:

That he is an attorney admitted to practice in the United States District Court for the Eastern District of New York and is also admitted to practice before the Supreme Court of the State of New York. That your deponent is an associate of GERALD S. JACOBS, the attorney of record for the plaintiff herein and that your deponent is making this affidavit due to the fact that Mr. Jacobs is out of town and will not return for some time.

That the above entitled action is based upon a lease entered into between the plaintiff as lessor and BERNARD QUINTIN and THOMAS QUINTIN, individually and d/b/a THE QUINTIN COMPANY co-partners under the laws of the State of California. That a copy of the said lease is attached hereto and marked Exhibit A. The defendant, DOROTHY K. QUINTIN is a guarantor of the said lease, as per the attached copy of the guarantee marked Exhibit B.

That the said defendants failed and refused to pay the rentals due under the lease for the month of January, 1973, and all of the months subsequent thereto and that plaintiff, pursuant to the terms of the said lease notified all of the defendants of their default but the defendants have failed to cure the same.

That as a result of the default which was precipitated wholly and solely by the defendants, plaintiff instituted this action to

By 11/1/00 Vice President Dr. J. M. ...
Authorized Representative Dr. J. M. ...
(PLEASE SIGN ALL 4 COPIES) Dr. J. M. ...

recover the rentals due under the said lease.

That if the order of this Court dated March 18, 1975, were permitted to stand, plaintiff would be deprived of its day in court due to a clerical error on the part of your deponent.

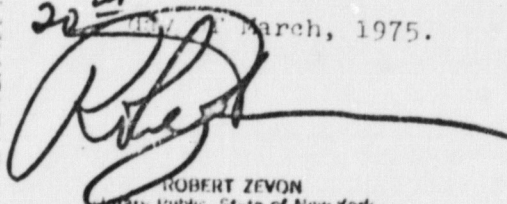
That when the notice dated February 19, 1975, of the order setting this matter down for a status report for March 18, 1975, was received in the office of the attorney for the plaintiff, the same was given to your deponent who placed it on his desk and then filed the same without remembering to note the same in his diary. That as a result of your deponent's clerical mistake, this matter has been dismissed by this Court and such dismissal should be vacated so as to give the plaintiff its day in court.

That this matter had been on for a pre-trial status report previously on the 13th day of December 1973, and had been dismissed by order of this Court dated December 13, 1973, for the failure of the plaintiff to appear. Thereafter, Nick Limar, Esq., an associate of your deponent, moved this Court for an order restoring this matter to the calendar and such motion was granted and the dismissal of the complaint was vacated and set aside.

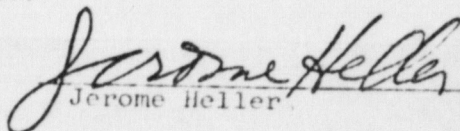
That since the last time this matter was on for a pre-trial status report, a motion was made by the then attorneys for the defendants to be relieved as attorneys for all of the defendants and said motion was granted under date of February 28, 1974.

WHEREFORE, it is respectfully requested that this Court grant an order vacating the order of March 18, 1975, dismissing the complaint and that an order be made setting this matter down for a status report as soon as is possible.

Sworn to before me this
22nd day of March, 1975.



ROBERT ZEVON
Notary Public, State of New York
No. 41929639d
Qualified in Queens County
Commission Expires March 30, 1976



Jerome Heller

THIS NATIONAL BANK OF CHICAGO, AS AGENT, AS COLLATERAL SECURITY FOR THE LOAN, IS HEREBY SUBMITTING TO THE NATIONAL EQUIPMENT RENTAL, LTD. A LOAN INVOLVING CREDIT AND TERM LOAN AGREEMENT DATED AS OF MARCH 1, 1973.

SCHEDULE	
1. TERM:	66 months
2. RENTAL PAYMENTS:	\$361.00 per month for the first 66 months, per month for the next months, per month for the next months, per month for the next months, per month for the next months.
3. ADVANCE RENTALS:	\$722.00 payable at the time of signing of this schedule, to be applied to the 65th and 66th rental payments.
4. RENEWAL OPTION:	\$ * 5. SECURITY DEPOSIT: \$ -
6. EQUIPMENT LOCATION:	4524 West 1st Street
7. LESSEE'S ADDRESS:	Santa Ana, California
8. EQUIPMENT DESCRIPTION:	1 Burroughs L2301-608 Mini-Computer; 1 Burroughs A562 Tape Perforator; 1 Burroughs A581 Tape Reader
*\$722.00 - 1st Annual Renewal payable in Advance \$722.00 - 2nd Annual Renewal payable in Advance \$361.00 - 3rd Annual Renewal payable in Advance	
9. LIABILITY INSURANCE REQUIRED:	\$100,000- Personal Injury \$25,000. Property Damage

1. TERMS AND RENTAL NOTICES: Subject to the conditions herein stated, this lease shall be for a period stated in the Schedule commencing with delivery to Lessee, its agent or a carrier, whichever shall be earlier. Lessee agrees to pay the total rent for the term, which shall be in the total amount of all rental payments stated in the Schedule, plus such additional rentals as are provided herein. All payments shall be made at the office of the Lessor specified below or at such other place as Lessor or Lessor's assignee may in writing designate, Monthly in advance.

2. TITLE: Lessor shall at all times retain title to the equipment. All documents of title and evidences of delivery shall be delivered to the Lessor. Lessee will not change or remove any insignia or lettering which is on the equipment at the time of delivery or which is thereafter placed thereon indicating Lessor's ownership thereof, and at any time during the lease term, upon request of Lessor, will affix to the equipment, in a prominent place, labels, plates or other markings supplied by Lessor stating that the equipment is owned by Lessor. Lessor may at Lessee's expense cause this lease to be filed, recorded, refiled, rerecorded or financing statements (which may be signed by the Lessor only if permitted by statute) to be filed as permitted or required by law. Lessee at its expense shall protect and defend Lessor's title, at all times keeping the equipment free from any legal process and/or encumbrances whatsoever, including, but not limited to liens attachments, levies and executions, and shall give Lessor immediate written notice thereof and shall indemnify Lessor for any loss caused by the failure of the Lessee to take action as provided herein.

3. PURCHASE, DELIVERY AND PREPAYMENTS: Lessee requests Lessor to purchase the equipment from a vendor selected by Lessee and arrange for delivery, which shall be deemed complete upon arrival at Lessee's premises or when otherwise received by Lessee's agent. If Lessee requests Lessor to make any payments to vendor or supplier, or if Lessor makes any such payment prior to delivery and acceptance, and if Lessee for any reason does not accept the equipment, Lessee shall, on demand by Lessor, pay Lessor any amounts theretofore paid or owing by Lessor in respect to the purchase of such item of equipment and upon such payment, Lessee shall be subrogated to Lessor's claims, if any, against the manufacturer or other supplier thereof and Lessee shall become entitled to such item, as-is where-is, without warranty, express or implied, by the Lessor with respect to any matter whatsoever, and Lessee shall indemnify and save Lessor harmless from any and all liability to the supplier thereof.

4. CARE AND USE OF EQUIPMENT: Lessee, at its own cost and expense, shall maintain the equipment in good operating condition, repair, and appearance, and protect same from deterioration other than normal wear and tear; shall use the equipment in the regular course of its business only, within its normal capacity, without abuse, and in a manner contemplated by the manufacturer thereof; shall not make modifications, alterations or additions to the equipment (other than normal operating accessories or controls), without the written consent of Lessor, which shall not be unreasonably withheld; shall not so affix the equipment to realty so as to change its nature to real property, and agrees that the equipment shall remain personal property at all times regardless of how attached or installed; shall keep the equipment on the premises where delivered, and shall not remove the equipment without the written consent of Lessor, which shall not be unreasonably withheld. All modifications, repairs, alterations, additions, replacements, substitutions, operating accessories and controls shall accrue to the equipment and become the property of the Lessor. Lessor shall have the right, during normal hours, to enter upon the premises where the equipment is located in order to inspect, observe or remove same, or otherwise protect Lessor's interest, and Lessee shall cooperate in affording Lessor the opportunity to do same. For the purpose of assuring Lessor that Lessor's equipment will be properly serviced, Lessee agrees to cause the equipment to be maintained pursuant to the manufacturer's standard preventive maintenance contract and/or recommendations.

5. NET LEASE: Lessee intends the rental payments in this lease to be net to the Lessor. Lessee shall comply with all laws and shall pay all taxes, including but not limited to sales and use taxes, excise taxes, personal property taxes and assessments, licenses, registrations fees, freight and transportation charges and any similar charges imposed on the ownership, possession, or use of the equipment during the term of this lease. Lessee shall pay to Lessor all costs and expenses including attorney's fees as hereinafter defined, storage, caretaking and repossession expenses in connection with the enforcement of Lessor's rights under this lease. In case any charges, costs, taxes or expenses required to be paid by the Lessee under this lease shall remain unpaid after the due date thereof, Lessor shall have the right but shall not be obligated to pay the same and with the next rental payment. The rental set forth herein is based on the prime rate as of the date hereof. Lessee agrees that if there is an increase in the prime rate during the term hereof, the rental shall be increased in accordance therewith.

6. INDEMNITY: Lessee shall and does hereby indemnify and save Lessor harmless from any and all liability arising out of the ownership, selection, possession, leasing, renting, operation, control, use, maintenance, delivery and/or return of the equipment.

The additional terms and conditions on the reverse side hereof are incorporated in and made a part of this lease.

The undersigned agree to all the terms and conditions set forth above and on the reverse side hereof, and in witness whereof, they hereby execute this lease. This lease shall be binding upon all parties, their successors, legal representatives and assigns.

ACCEPTED AT EL MONTE, CALIF. BY: BERNARD QUINTIN & THOMAS QUINTIN, Individually
 ON December 7, 1972 8-18-72 1972
 NATIONAL EQUIPMENT RENTAL, LTD.
 By Bernard Quintin (Title)
 (PLEASE SIGN ALL 4 COPIES) (IF CORPORATION AFFIX CORPORATE SEAL)

RIDER TO LEASE NO. 86 792, SCHEDULE A, DATED December 7, 1975

BETWEEN NATIONAL EQUIPMENT RENTAL, LTD., LESSOR, AND BERNARD QUINTIN, THOMAS QUINTIN, individually and dba THE QUINTIN COMPANY, Co-Partners Under the Laws of The State of California, LESSEE.

17. Lessor shall not be responsible for any loss or damage caused by error in programming or instructions to the leased equipment, latent defect, wear and tear or gradual deterioration of the leased equipment, or loss of the service or use of the leased equipment or any part thereof. Lessee represents that the equipment selected by it is of a size, design and capacity for its use.
18. Lessee agrees that Lessor shall not be liable to Lessee or anyone else for any liability, claim, loss, damage or expense of any kind or nature caused directly or indirectly by:
1. The inadequacy of the equipment, or of any item supplied by the vendor or any other party.
 2. Any deficiency with respect to any equipment, programming or training to be supplied to the lessor/lessee by the vendor or any other party.
 3. The use or performance of any equipment.
 4. Any interruption of use or loss of service or use or performance of any equipment.
 5. Any loss of business or other consequence or damage, whether or not resulting from any of the foregoing.

BERNARD QUINTIN, and THOMAS QUINTIN,
Individually and dba THE QUINTIN COMPANY,
Co-Partners Under the Laws of The State of
California

By: Bernard Quintin (title)

By: Thomas Quintin
Thomas Quintin

questioned, in a post office under the jurisdiction of the United States Postal Service within the State of New York.

Rose Arbeit
Rose Arbeit

Sworn to before me this 20th day
of March, 1975.

JUDICIAL OFFICER
Notary Public, State of New York
No. 30-1748050
Qualified in Nassau County
Commission Expires March 30, 1978

GUARANTEE OF PAYMENT

In consideration of One (\$1.00) Dollar in hand paid, the receipt of which is hereby acknowledged, and in consideration of the execution by NATIONAL EQUIPMENT RENTAL, LTD. of a written Lease No. 86 792 dated _____, and all schedules now or hereafter made a part thereof, which Lease and Schedules are hereinafter called the Lease, the undersigned for himself, his heirs, executors, administrators, successors and assigns, jointly and severally, hereby irrevocably and unconditionally guarantee payment when due, whether by acceleration or otherwise, of any and all the obligations and liabilities due and to become due to Lessor from

BERNARD QUINTIN and THOMAS QUINTIN, Individually and dba THE QUINTIN CO:
Partners Under The Laws of the State (Name of Lessee) of California
4524 West 1st Street, Santa Ana, California
(Address of Lessee)

as Lessee under said Lease, together with all interest thereon and all attorneys' fees, costs and expenses of collection incurred by the Lessor in enforcing any of such obligations and liabilities.

The undersigned acknowledges notice of the intended assignment of the aforesaid Lease and hereby consents to such assignment and specifically agrees that this Guarantee is and shall be an open and continuing Guarantee and all obligations and liabilities to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon and shall continue in full force and effect, notwithstanding any (a) change in rentals or other obligations under said Lease, (b) renewals, modifications, additions or extensions thereto or extensions of time to perform any of the obligations thereunder; and waives notice of the assignment by NATIONAL EQUIPMENT RENTAL, LTD., and waives notice of any such changes, renewals, modifications, additions, extensions or of any default by the Lessee thereunder. The undersigned further agrees and consents to any assignment of this Guarantee, in which event it shall enure to the benefit of any such assignee with the same force and effect as though the said assignee was specifically named herein and hereby waives any notice of any such assignment.

No invalidity, irregularity, or unenforceability of all or any part of the obligations and liabilities hereby Guaranteed or of any security therefor shall effect, impair or be a defense to this Guarantee, and this Guarantee is a primary obligation of the undersigned.

This instrument shall be deemed to have been made in Nassau County, New York, and shall be interpreted in accordance with the laws of the State of New York, and as part of the consideration for the Lessor's execution of the aforementioned Lease, the undersigned Guarantor hereby agrees that any and all actions or proceedings arising directly or indirectly from this Guarantee shall be litigated in courts having a situs within the State of New York, and the undersigned Guarantor hereby consents to the jurisdiction of any local, State or Federal Court located within the State of New York, and the undersigned Guarantor hereby waives personal service of any and all process, and consents that all such service of process may be made by certified or registered mail, return receipt requested, directed to the undersigned Guarantor at the address indicated below; and service so made shall be complete two (2) days after the same has been posted as aforesaid.

The undersigned, if more than one, shall be jointly and severally liable hereunder and the term "undersigned" wherever used herein shall mean the undersigned or any one or more of them. Any one signing this guarantee shall be bound hereby, whether or not any one else signs this guarantee at any time.

Dated: Sept. 8, 1972, the _____ day of _____, 19____
(City and State)
Rosaly K. Quintin residing at 571 Stuyvesant Pl. Co-sta Mesa, Calif
(wife) _____
_____ residing at _____
_____ residing at _____
_____ residing at _____
_____ residing at _____
_____ residing at _____
_____ residing at _____
_____ residing at _____
_____ residing at _____

STATE OF California
COUNTY OF Orange ss.:

On this 8th day of September, 1972, before me personally appeared

Rosaly K. Quintin
to me known, and known to me to be the person(s) described in and who executed the foregoing instrument, and (s) he (y) (sexesally) acknowledged to me that he (y) executed the same.



C. RICHARD NOTHE
NOTARY PUBLIC
STATE OF CALIFORNIA
COMMISSION EXPIRES NOV. 11, 1975

Notary Public
(Affix Stamp and Seal)

Form IG-R-1/65

mailed, in a post office within the United States Postal Service within the State of New York.

Sworn to before me this 20th day of March, 1975.

Rose Arbeit
Rose Arbeit

STATE OF NEW YORK, COUNTY OF

ss.:

The undersigned, an attorney admitted to practice in the courts of New York State,

☐ Certification By Attorney certifies that the within has been compared by the undersigned with the original and found to be a true and complete copy.
☐ Attorney's Affirmation shows: deponent

Check Applicable Box

the attorney(s) of record in the within action; deponent has read the foregoing and knows the contents thereof; the same true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief and that as to those matters deponent believes it to be true. This verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated:

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF

ss.:

☐ Individual Verification the foregoing being duly sworn, deposes and says: deponent in the within action; deponent has read and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true.
☐ Corporate Verification the foregoing of a corporation, in the within action; deponent has read the foregoing and knows the contents thereof; and the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true. This verification is made by deponent because is a corporation and deponent is an officer thereof.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

STATE OF NEW YORK
COUNTY OF NASSAU

Rose Arbeit, being duly sworn deposes and says that deponent is not a party to this action, is over 18 years of age and resides at New Hyde Park, New York. On the 20th day of March, 19 75, deponent served the within ~~complaint~~ and ~~complaint~~ Notice of Motion and Affidavit upon Bernard Quintin Thomas Quintin and Dorothy K. Quintin,

defendants in this action at c/o Bernard G. Quintin, 1094 Cudahy Place #106, San Diego, California 92110

respectively, the addresses designated by said defendants for the purpose by depositing a true copy of the same in a post-paid properly addressed wrapper via Certified Mail, Return Receipt Requested, in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

Rose Arbeit
Rose Arbeit

Sworn to before me this 20th day of March, 19 75

JAY J. WALL
CLARK FERGUS
MARTIN N. SWANSON, JR.

WALL, FERGUS AND SWANSON
ATTORNEYS AT LAW
1345 NORTH GRAND AVENUE
SANTA ANA, CALIFORNIA 92701

FILED
IN CLERK'S OFFICE
U.S.D. DISTRICT COURT E.D. N.Y.
TELEPHONE
(212) 547-1100

March 20, 1975

★ MAR 27 1975 ★

TIME A.M. _____
P.M. _____

Handwritten notes:
b2, b7C
per
est exp.
clerk since
March 3/26/75
S.W.

United States District Court
Office of the Clerk
Eastern District of New York
United States Court House
Brooklyn, New York 11201

Re: National Equipment Rental vs. Bernard Quintin, et al
File No. 73-C-825

Dear Sir:

This office represents the defendants in the above captioned matter.

We have been advised previously that the action was dismissed and the case was closed. My clients have recently had forwarded to them a "Notice of Order" regarding a hearing set for March 18, 1975 at 9:30 a.m. in Courtroom 4. I have called the Clerk of the Court between the hours requested in the Notice and have been advised that he was not in. I subsequently spoke to a Mr. Agnello in the Court on March 18, 1975 and he advised me that with respect to the action taken by the Court on the hearing on March 18, 1975, "no one showed; the action was dismissed; the plaintiff was given twenty days to re-open the matter".

Please advise whether or not these items are correct. I have also been advised that the previous attorneys of record are no longer attorneys of record for the defendants, although it would appear to me that since our clients have received notice from the Court, except that forwarded to them by their previous attorneys, that there is a question as to whether or not this is actually factual.

In any event, will you please make any further communications referring to the defendants and the above captioned matter to this office.

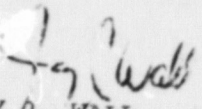
I would also appreciate it if you would enclose a copy of the docket sheet for my review so I can understand what the status of this matter is at the present time. Our check

United States District Court
Page Two
March 20, 1975

payable to the Clerk of the District Court is enclosed for
Not to Exceed \$5.00, which you are authorized to fill in for
the proper amount charged for forwarding to our office a copy
of the requested docket sheet.

Your prompt response to all of the above would be helpful.

Very truly yours,


JAY D. WALL

JJW: jr
Enclosure

cc: Mr. Thomas Quintin

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NATIONAL EQUIPMENT RENTAL, LTD.

Plaintiff,

NOTICE OF APPEAL

-against-

Index No. 73C825

BERNARD QUINTIN and THOMAS QUINTIN,
Ind. and d/b/a THE QUINTIN COMPANY
co-partners under the laws of the
State of California and DOROTHY
K. QUINTIN,

Defendants.

Notice is hereby given that National Equipment Rental, Ltd., a corporation, the plaintiff above named, hereby appeals to the United States Court of Appeals for the 2nd Circuit from the final order entered in this action on the 24th day of June, 1975.

Dated at Lake Success, N.Y., the 11th day of August, A.D. 1975.

Gerald S. Jacobs
Attorney for Plaintiff
Office and P.O. Address
410 Lakeville Road
Lake Success, N.Y. 11040
(212) 343-1005

Attorney for Appellant

By

Nick Limar
Nick Limar

FILED

AUG 15 9 53 AM '75

STATE OF NEW YORK, COUNTY OF

ss.:

The undersigned, an attorney admitted to practice in the courts of New York State,

☐ Certification By Attorney certifies that the within has been compared by the undersigned with the original and found to be a true and complete copy.
☐ Attorney's Affirmation shows: deponent is

Check Applicable Box

the attorney(s) of record for in the within action; deponent has read the foregoing and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. This verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.
Dated:

STATE OF NEW YORK, COUNTY OF

The name signed must be printed beneath

ss.:

☐ Individual Verification the being duly sworn, deposes and says: deponent is in the within action; deponent has read the foregoing and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true.
☐ Corporate Verification the of a corporation, in the within action; deponent has read the foregoing and knows the contents thereof; and the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true. This verification is made by deponent because is a corporation and deponent is an officer thereof.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me on 19

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF NASSAU

ss.:

Beth C. Frank being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and resides at Glen Oaks, N.Y.

☒ Affidavit of Service By Mail On August 14, 1975 deponent served the within NOTICE OF APPEAL upon Nickerson, Kramer, Lowenstein, Nessen, Kamin & Soll attorney(s) for Defendants in this action, at 919 Third Avenue, New York, 10022 by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in -- a post office -- official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Check Applicable Box

☐ Affidavit of Personal Service On 19 at deponent served the within upon

herein, by delivering a true copy thereof to h personally. Deponent knew the person so served to be the person mentioned and described in said papers as the therein.

Sworn to before me on August 14, 1975

The name signed must be printed beneath

Beth C. Frank

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NATIONAL EQUIPMENT RENTAL, LTD.,

Plaintiff,

-against-

NOTICE OF MOTION

Civil Action No. 73CB25

BERNARD QUINTIN and THOMAS QUINTIN,
Ind. and d/b/a THE QUINTIN COMPANY
co-partners under the laws of the
State of California and DOROTHY K.
QUINTIN,

Defendants,

FILED
U.S. DISTRICT COURT E.D. N.Y.

AUG 18 1975

SIRS:

TIME A.M.
P.M.

PLEASE TAKE NOTICE that upon Exhibits Annexed Hereto,
the plaintiff will move this court before the Honorable John
R. Bartels at the United States Courthouse, 225 Cadman Plaza,
Brooklyn, New York, on the 8th day of August, 1975, at 9:30 A.M.
in the forenoon thereof, for an order, ^{PURSUANT TO F.R.A.P. RULE 4(a)} to extend time for
appeal from the order of this court dated June 24, 1975, dismissing
the complaint.

Dated: Lake Success, N.Y.

Gerald S. Jacobs
Attorney for Plaintiff
Office and P.O. Address
410 Lakeville Road
Lake Success, N.Y. 11040
(212) 343-1005

To: Nickerson, Kramer,
Lowenstein, Nessen,
Kamin & Soll
Attorneys for Defendants
919 Third Avenue
New York, N.Y. 10022

By

Nick Limar

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NATIONAL EQUIPMENT RENTAL, LTD.,

Plaintiff,

-against-

BERNARD QUINTIN and THOMAS QUINTIN,
Ind. and d/b/a THE QUINTIN COMPANY
Co-partners under the laws of the
State of California and DOROTHY K.
QUINTIN,

Defendants.

Plaintiff moves the court for an order extending the time to appeal from the order entered June 24, 1975 for a period of thirty days to and including the 18th day of August, 1975, *PURSUANT TO F.R.A. RULE 4 (A).*

The plaintiff-appellant did not learn of the entry of order until July 18, 1975.

Gerald S. Jacobs, counsel for plaintiff, requested to be served with a copy of the order. Copy of said request dated June 5, 1975, is attached hereto.

The clerk's notice of entry of order was mailed to Gerald S. Jacobs, counsel for plaintiff on the 17th day of July, 1975 and was received on July 18, 1975.

Attached hereto are Exhibits of clerk's receipt of payment for copy of order and copy of stamped envelope.

July 30, 1975

Gerald S. Jacobs
Attorney for Plaintiff
Office & P. O. Address
410 Lakeville Road
Lake Success, N.Y. 11040
(212) 343-1005

84: *[Signature]*

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NATIONAL EQUIPMENT RENTAL, LTD.,

Plaintiff,

-against-

BERNARD QUINTIN and THOMAS QUINTIN,
Ind. and d/b/a THE QUINTIN COMPANY
Co-partners under the laws of the
State of California and DOROTHY K.
QUINTIN,

Defendants.

STATE OF NEW YORK)
COUNTY OF NASSAU) ss.

Nick Limar being duly sworn upon oath deposes and says:

I was associate to counsel for the plaintiff in the above-entitled action. The clerk's notice of entry of order entered on June 24, 1975, received by me on the 18th day of July, 1975, addressed to the office of counsel for the plaintiff, Gerald S. Jacobs.

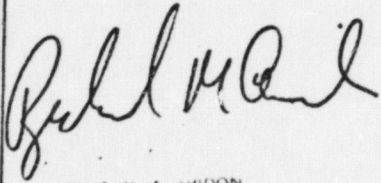
Attached hereto are Exhibits of clerk's receipt of payment for copy of order and copy of clerk's stamped envelope.

By letter dated June 5, 1975, (attached hereto) Gerald S. Jacobs, counsel for plaintiff, requested to be served with a copy of the order.

Gerald S. Jacobs
Attorney for Plaintiff
Office & P. O. Address
410 Lakeville Road
Lake Success, N.Y. 11040

By:

Nick Limar


RICHARD M. AVDON
NOTARY PUBLIC, State of New York
No. 00011210
Qualified in all counties
Commission Expires March 1, 1976

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NATIONAL EQUIPMENT RENTAL, LTD.,

Plaintiff,

-against-

BERNARD QUINTIN and THOMAS QUINTIN,
Ind. and d/b/a THE QUINTIN COMPANY
Co-partners under the laws of the
State of California and DOROTHY K.
QUINTIN,

Defendants.

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT, E.D. N.Y.

AUG 16 1975

TIME 11 AM
P.M.

73-825

This matter came on duly and regularly for hearing before the undersigned judge of the above-entitled court upon motion of the plaintiff for an order extending the time for appeal in the above-entitled cause. The plaintiff and the defendant were present through their attorneys of record. It appeared to the court that the clerk's notice of entry of order was belatedly mailed to the plaintiff's counsel and that the plaintiff's delay in taking his appeal in this cause is the result of excusable neglect;

NOW, THEREFORE, it is hereby ordered, adjudged and decreed:

That the time within which the plaintiff may take an appeal to the United States Court of Appeals for the 2nd. Circuit is hereby extended to and including the 18th day of August, 1975, which date is not more than thirty days beyond the expiration of the original time for appeal, prescribed by Rule 4 (a) of the Federal Rules of Appellate Procedure.

Done ~~in open court~~ this 14th day of August, 1975

John R. Bartels
United States District Judge

CLERK'S CERTIFICATE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
NATIONAL EQUIPMENT RENTAL, LTD.

vs.

73C 825

BERNARD QUINTIN, et al

-----X
I, LEWIS ORGEL, Clerk of the United States District Court for the Eastern District of New York, do hereby certify that the foregoing copy of the Docket Entries from A to C and the original papers numbered from page 1 to 30 constitute the Record of Appeal.

I further testify that the last day to file said record is September 10, 1975.

IN TESTIMONY WHEREOF, I have caused the seal of said Court to be hereunto affixed, at the Borough of Brooklyn in the Eastern District of New York, this 9th day of September in the year of our LORD, One Thousand Nine Hundred and Seventy five and of the Independence of the United States

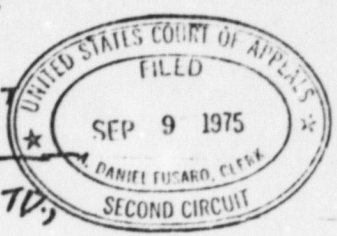
~~TWO~~ ~~One~~ Hundred and ~~xxxx~~

LEWIS ORGEL
CLERK

By: M. Anderson

DEPUTY CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
NATIONAL EQUIPMENT RENTAL, LTD.,



Plaintiff,

- against -

73C825

BERNARD QUINTIN, et al.,

Defendants.

INDEX ON APPEAL

Photocopy of docket entries	A-C
Petition for Removal and Bond	1/1a
Notice of filing petition & bond	2
Order of Bartels, d. of 6/22/73 extending deft's time to answer	3
Notice of Motion & memo of law to transfer case to California	4/5
Affidavit of Gerald S. Jacobs & memo of law in opposition to motion	6/7
Reply affidavit of L. W. Wagman	8
Stenographer's transcript of 8/17/73	9
Order of Bartels, d. extending time to answer	10
Answer	11
Letter adjourning status rep't to 11/9/73	12
Notice of motion to relieve attorneys for deft's	13
Order of Bartels, d. dismissing	14
Affidavit of Nick Limar to reopen case	15
Copy of letter from Nick Limar to att's for deft's	16
Order of Bartels, d. vacating dismissal	17

DEPUTY CLERK

Order of Bartels, J. relieving atty's for def'ts	18
Notice of entry filed	18
Letter from former att'ys for def'ts re address of def't.	19
Order of Bartels, J. dismissing	20
Not. of Motion to vacate dismissal	21
Letter from Jay J. Wall	22
Aff. of Bernard Quintin	23
Order of J. Bartels, J. dismissing complaint unless pl'tf submits affidavit showing good cause for failure to appear at status rpt	24
Letter to J. Bartels from M. S. Dorman	25
Unsigned order re restoration of action	26
Notice of appeal filed	27
Order of Bartels, J., extending time for appeal	28
Not. of Motion for order pursuant to F.R.A.P. Rule 4(A)	29
Clerk's Certificate	30